

**PUERTO RICAN
LEGAL DEFENSE
AND EDUCATION
FUND**

Kathy Ahearn
Counsel
New York State Education Department
Washington Avenue
Albany, NY 12234

January 3, 2002

Re: *New LAB test for progress and exit from bilingual/ESL programs*

Board of Directors

Dear Kathy:

Executive Committee

Gabriel G. Ortiz, Esq.
Chair

Martín J. Carrillo-Arroyo, Ed.D.
Vice-Chair

Ana M. Bantó, CPA
Treasurer

Diana Cortés, Esq.
Secretary

Bertha Romero, Esq.
Member-at-Large

José R. Sánchez, Ph.D.
Member-at-Large

William F. Cahilo, Esq.
Member-at-Large

Gilbert F. Casella, Esq.
Member-at-Large

Amy Gladstein, Esq.
Member-at-Large

David R. Jones, Esq.
Member-at-Large

Felix A. Martínez, Esq.
Member-at-Large

José S. Reynoso, Esq.
Member-at-Large

Eugenio Rivera, CSW
Member-at-Large

Robert F. Rosario, CPA
Member-at-Large

Honorary Directors
Abra. Rovinsky, Esq.
Martin H. Zuckerman, Esq.

**President and
General Counsel**
Joaquín A. Figueroa

99 Hudson Street
NY, NY 10013-2815
TEL: 212-219-3360
800-328-2322
FAX: 212-431-4376

I'm writing to you as counsel for ASPIRA of New York, the organizational plaintiff in the 1974 court case against the New York City Board of Education which ended with a Consent Decree mandating the provision of bilingual education services to Spanish dominant students in New York City's public schools. That Consent Decree is still in force in New York City and the Puerto Rican Legal Defense and Education Fund continues to monitor compliance with the Decree. As a result of the litigation, a federal district court ordered that the Language Assessment Battery (LAB) be used to assess English proficiency and determined that those students who scored below the 20th percentile on the English version of the LAB be administered a Spanish version of the LAB. If the score on the Spanish LAB was higher than the score on the English LAB, the student was considered eligible for bilingual services and a member of the class of students protected by the provisions of the ASPIRA Consent Decree.

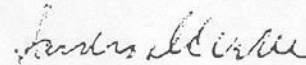
We recently had a meeting with staff at the New York City Board of Education regarding the development of a new instrument to be used to identify English Language Learners (ELLs). For now anyway it is being called the revised LAB. The test, however, is completely new and will be tied to the English Language Arts learning standards. The most important changes are that it will be a criterion-referenced assessment rather than a norm-referenced test, like the "old" LAB, that only an English version will be used and that more than one test will be used to determine identification, progress and exit from programs. The "old" LAB was used for all three functions. We were told that while New York City Board staff is handling the development of the new LAB for identification, the state is "taking the lead" in developing the assessment to be used for progress and exit. We were told that the lead developer for the state was Gerald DeMauro.

We are pleased to see the state and the City working together to create a new exam which we believe may have a positive impact on the education of ELLs. However, since New York City is under a legal obligation to use an assessment system approved by the federal courts, it cannot adopt or use the exams being developed by the state without the approval of the ASPIRA plaintiffs and, I believe, the court. Therefore, in order to make sure that we continue working together for the benefit of students, I would like to set up a meeting in New York City with the appropriate representatives from the State Education Department, including Mr. DeMauro, I assume, and plaintiffs to discuss the proposed tests in as much detail as possible. We had a very informative and I think, productive meeting with the New York City Board staff where we were able to have testing and ELL education experts chosen by my office listen to the presentations made by the Board staff so that they could advise plaintiffs on the propriety of the test being developed. Roger Maldonado, counsel to the *Jose P.* plaintiffs regarding bilingual special education services also attended.

Please call me at your earliest convenience so that we can set this up quickly.

Post-It® Fax Note	7671	Date	1/28/02	# of pages	2
To	Carmen	From	Blou		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #		Fax #			

Sincerely,



Sandra Del Valle
Associate Counsel

cc: Hector Gesualdo
ASPIRA of New York

Mary McKenna Rodriguez, Esq.
New York City Board of Education

Roger Maldonado, Esq.
Balber, Pickard, Banistoni, Maldonado & Van Der Tuin

A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ASPIRA OF NEW YORK, INC., et al.,

Plaintiffs,

72 Civ. 4002
(MEF)

-against-

BOARD OF EDUCATION OF THE CITY
OF NEW YORK, et al.,

Defendants.
-----X

CONSENT DECREE

1. WHEREAS, this class action was commenced on September 20, 1972 by Puerto Rican and other Hispanic public school children, their parents, and Aspira of New York, Inc., and Aspira of America, Inc., against the members of the Board of Education of the City of New York, the Chancellor of the City School District, and various officials of certain community school districts; and

2. WHEREAS, the Board of Education and the Chancellor of the City School District are the defendants entering into this decree, and are hereafter referred to as the "defendants", and,

3. WHEREAS, defendants acknowledge that plaintiff children have rights under 42 U.S.C. §2000d and the regulations promulgated thereunder enforced in Lau v. Nichols, 414 U.S. 563 (1974); and defendants acknowledge their duty to implement those rights and to secure for plaintiff children the enjoyment thereof; and,

4. WHEREAS, plaintiffs and defendants have agreed upon a Program and the steps required for the implementation

thereof which will secure the federally protected rights of plaintiff children; and,

5. WHEREAS, in view of the shared understanding of principles, the parties and the Court have concluded there is no further need to litigate the issue of liability or the nature of the program to be provided and the parties have mutually agreed to the entry of this consent decree; and,

6. WHEREAS, plaintiffs, by consenting to the entry of this decree, do not waive any rights they have under the Fourteenth Amendment to the Constitution of the United States; and,

7. WHEREAS, plaintiffs maintain that the defendants have committed violations of law, and the defendants deny that they have committed violations of law; and, the defendants by consenting to the entry of this decree do not admit that they have committed any violations of law;

IT IS, THEREFORE, HEREBY ORDERED, ADJUDGED AND DECREED, and the parties do hereby consent as follows:

1. An improved method for accurately and systematically identifying and classifying children who are Spanish speaking or Spanish surnamed will be designed and implemented by the Board of Education. In anticipation of the parties' entering into a consent decree, the development of such method has begun with the objective of implementation by October 1, 1974. The improved method of classifying shall be designed, among other things, to identify those children whose English language deficiencies prevent them from effectively participating in the learning process, and who can more effectively participate in Spanish. Such improved method will identify the children according to their ability to speak, read, write and comprehend

English and Spanish. The evaluation of a child's reading ability shall include an assessment of his/her reading skills, including reading readiness skills where appropriate, in both English and Spanish.

Periodically, and in any event at least once a year, each child who is Spanish speaking or Spanish surnamed will be so identified and classified. A child who first enters the New York City public school system at the beginning or during the school year and who is Spanish speaking or Spanish surnamed will be identified and classified as soon as possible, but in any event no later than the first full week after his/her enrollment.

In the event such improved method of identifying and classifying is not developed for full implementation at all grade levels by October 1, 1974, the defendants shall promptly notify plaintiffs' counsel in writing setting forth the reasons why full implementation at all grade levels is not possible, and describing the method of identifying and classifying children who are Spanish speaking or Spanish surnamed to be used in that event, and providing any and all instruments, instructions, or other materials relating to that method. Such instruments, instructions, or other materials shall be made available to plaintiffs' counsel subject to such stipulation as may be agreed upon between counsel for the parties as may be necessary to insure that the confidentiality and integrity of the testing instrument and materials are preserved.

2. The Board of Education acknowledges its responsibility to provide all children attending the public schools, both English-speaking and non-English-speaking children, with programs in which they can effectively participate and learn. All children whose English language deficiency

prevents them from effectively participating in the learning process and who can more effectively participate in Spanish shall receive: (a) a planned and systematic program designed to develop the child's ability to speak, understand, read and write the English language (a subject matter course taught in English, however, shall not constitute such a program; and a child should receive intensive instruction in English at times other than the periods in which he/she is scheduled to receive instruction in substantive courses in Spanish); (b) instruction in substantive courses in Spanish (e.g. courses in mathematics, science, and social studies) which is to say, a child is not to receive instruction in any substantive courses in a language which prevents his/her effective participation in any such course, rather than in a language in which he/she can more effectively participate; (c) a planned and systematic program designed to reinforce and develop the child's use of Spanish; and, a planned and systematic program designed to introduce reading comprehension in Spanish to those children entering the school system whose reading readiness assessment indicates the need therefor. In addition to the foregoing elements, (hereinafter referred to as the "Program") and not at the expense of those elements, an important element of the above Program will be that the students receiving instruction will spend maximum time with other children so as to avoid isolation and segregation from their peers.

3. This action is properly maintainable as a class action under Rule 23(b)(2) of the Federal Rules of Civil Procedure. Members of the class are: all New York City public school children whose English language deficiency prevents them from effectively participating in the learning process and who can more effectively participate in Spanish, and the parents and

guardians of these children.

4. The Board of Education, pursuant to Section 2500-a, and the Chancellor, pursuant to Section 2500-b of the Education Law of New York, shall promulgate by April 1, 1975, to become effective September 1, 1975, such minimum educational standards as shall ensure that the Program shall be furnished to those children whose English language deficiency prevents them from effectively participating in the learning process and who can more effectively participate in Spanish, and the Chancellor and Board of Education shall be responsible for ensuring that the Program is provided in each of the community school districts. In the event the Chancellor distributes or circulates proposed minimum educational standards for comment to individuals, groups, and/or organizations he may wish to consult and/or advise, he shall do so on or before November 15, 1974, and he shall make available to plaintiffs' counsel copies of such proposed minimum educational standards at least fifteen (15) days prior to their distribution or circulation. As part of such minimum standards to be promulgated, provision shall be made that appropriate and necessary personnel are utilized for the Program and that children entitled to the Program are not denied their right to receive said Program, within a school, because of reduction of personnel appropriate for the Program. On or before February 28, 1975 and prior to the promulgation of the minimum educational standards on April 1, 1975, the Chancellor shall make available to plaintiffs' counsel the minimum educational standards. In the event plaintiffs object to the minimum educational standards on the grounds that the standards fail to comply with the terms of the Consent Decree and the parties are unable to resolve their differences promptly, the minimum educational standards in dispute shall be presented by plaintiffs to the Court.

5. Appropriate materials, tests, measuring devices, and other instructional instruments shall be distributed to school officials, and, where necessary, developed for use in the Program. Such materials, tests, measuring devices, and other instructional instruments shall be made available to plaintiffs' counsel subject to such stipulation as may be agreed upon between counsel for the parties as may be necessary to ensure that the confidentiality and integrity of the testing instrument and materials are preserved.

6. Materials used in the Program shall avoid negative stereotypes of members of any ethnic or racial group, and, shall positively reflect, where appropriate, the culture of the children within the Program. Additionally, any personnel training program shall continue to be sensitive to the cultural diversities of children.

7. It is necessary to have an adequate staff for the purpose of implementing the Program. In that connection, a professional in the Program shall: (a) be fluent in the Spanish language, and able to fully comprehend and express himself in written Spanish; (b) possess the requisite content and knowledge skills in the substantive courses in which he teaches; (c) possess the requisite pedagogical skills; and (d) be capable of reading, writing and speaking English. In order to provide such staff the Board of Education shall in good faith take steps which shall include: (i) the developing and implementing of Programs to retrain personnel, who possess content and pedagogical skills, to become fluent in a second language to enable them to participate in the Program; (ii) the developing and implementing of an intensive and ongoing affirmative action program designed to recruit forthwith bilingual personnel in New York City and elsewhere, within the New York City school

system and without, and to place such bilingual personnel appropriately in the school system; (iii) the creation of additional bilingual licenses needed to implement the Program; (iv) the developing and implementing of programs designed to train forthwith personnel, who do not possess bilingual licenses, in preparing for and taking of licensing examinations for said licenses; (v) the scheduling and grading of all bilingual licensing examinations on an expedited basis, so as to provide an opportunity for persons to obtain bilingual licenses, and the use of the Board of Education's best efforts to schedule such examinations as frequently as is necessary to recruit and maintain sufficient staff; and (vi) the use of the Board of Education's best efforts to retrain or place personnel (a) who possess bilingual licenses but who are presently teaching under other licenses and (b) who are fluent in English and Spanish and who are presently teaching in bilingual programs.

8. The Chancellor shall, no later than October 30, 1974, identify a sufficient number of elementary schools, junior high schools, and high schools as Pilot Schools. By the beginning of the second semester of the 1974-75 school year, these Pilot Schools shall provide all elements of the Program to all children within the defined class attending those schools. Such Pilot Schools shall serve the purpose of, among other things, demonstrating on a systematic basis to school personnel on a borough-wide level the means of developing, implementing, and operating the Program. Moreover, these Pilot Schools shall be used to train appropriate school personnel in other schools. The experience of these Pilot Schools shall be widely disseminated. Defendants shall use their best efforts to generate maximum necessary funds to implement the Program in the Pilot Schools, and at a minimum, shall allocate the funds

received in Section 11 of Resolution 69 adopted August 14, 1974 for these purposes.

9. The defendants shall provide for full implementation of the Program for all children within the class by September, 1975, and shall submit to plaintiffs' counsel and to the Court by October 18, 1974 an overall plan detailing the relevant elements in the development and implementation of the Program and setting forth a Timetable.

10. The defendants are under a duty to use their maximum feasible efforts to obtain and expend the funds required to implement the Program pursuant to the Timetable. They shall make good faith efforts and undertake all necessary steps to secure sufficient funds from City, State, Federal and other sources for such implementation. In the event defendants' good faith efforts fail to generate sufficient funds to implement this Program pursuant to the Timetable, defendants shall be required to show good cause to this Court why sufficient funds are unavailable, including what steps, if any, defendants have taken to generate sufficient funds from City, State, Federal and other sources. Special reports relating to the efforts being made to obtain funds from City, State, Federal and other sources, in order to effectuate all elements of the Program pursuant to the Timetable, shall be made to this Court by the Chancellor of the City School District of the City of New York on the fifteenth day of each month. Specific and detailed information of any obstacles encountered with respect to funding shall be included in said reports. Copies of the reports shall be provided to the plaintiffs' counsel. In the event there is a reasonable likelihood that full implementation pursuant to the Timetable will not take place by reason of insufficient funds, lack of personnel (even though all necessary steps have been taken pursuant to the terms of this Decree), or otherwise, defendants' counsel shall

inform plaintiffs' counsel of the pertinent facts relating thereto forthwith. The Chancellor shall establish appropriate reporting mechanisms to insure that Community School Boards shall expeditiously communicate such information to the Chancellor. The issue of funding in the event the defendants' good faith, maximum feasible efforts fail to generate funds to implement the Program pursuant to the Timetable need not be determined at this time. However, should either party believe that the issue of funding should be adjudicated because the Program cannot be fully implemented pursuant to the Timetable by reason of purported insufficiency of funds, that issue may be brought before the Court for a determination to be embodied in a supplemental decree.

11. Representatives of the Chancellor and the Board of Education shall consult with plaintiffs with respect to the development and implementation of all items contained in this Consent Decree.

12. The defendants shall submit to the Court, with copies to plaintiffs' counsel, detailed monthly periodic compliance reports commencing on September 18, 1974, on the progress of the implementation of the Program, and on defendants' adherence to the Timetable. Such reports shall include copies of relevant supporting documentation and other materials relating to the implementation of the Program and adherence to the Timetable.

13. The defendants acknowledge that the plaintiffs by entering into this Consent Decree do not waive any rights plaintiffs may have with respect to costs, disbursements, and reasonable attorneys' fees arising out of this action; and plaintiffs expressly reserve any and all rights they may have to costs, disbursements, and reasonable attorneys' fees, arising

out of this action.

14. The Court retains jurisdiction of this action for all purposes, including the entry of such additional orders as may be necessary or proper.

Dated: New York, New York

August 29, 1974.

Marvin E. Frankel

MARVIN E. FRANKEL
United States District Judge

The parties to this decree, by their attorneys, hereby consent to the entry of this order:

Herbert Teitelbaum

HERBERT TEITELBAUM
RICHARD J. HILLER
Puerto Rican Legal Defense
& Education Fund, Inc.
815 Second Avenue Room 900
New York, New York 10017
(212) 687-6644

ATTORNEYS FOR PLAINTIFFS

ADRIAN P. BURKE
Corporation Counsel
City of New York
Municipal Building
New York, New York 10007
(212) 566-5500

By: *James C. Grellman*
JAMES C. GRELLMAN
DONOR GOPSTEIN

ATTORNEYS FOR The Chancellor
of the City School District,
and the Board of Education
of the City of New York