



SD-CO-0001-0003

FILED
U.S. DISTRICT COURT
DISTRICT OF COLORADO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. C-1499

03 MAR 3 04:35

WILFRED KEYES, et al.,

Plaintiffs,

and

CONGRESS OF HISPANIC EDUCATORS, et al.,

Plaintiffs-Intervenors and Counter-Defendants,

v.

SCHOOL DISTRICT NO. 1, DENVER, COLORADO, et al.,

Defendants and Cross-Defendants,

and

THE STATE OF COLORADO ex rel. GALE A. NORTON,

Defendant-Intervenor, Cross-Plaintiff, and Counter-Plaintiff.

MOTION OF DEFENDANT SCHOOL DISTRICT NO. 1 TO MODIFY
THE LANGUAGE RIGHTS ORDER OF AUGUST 17, 1984

Defendant School District No. 1, Denver, Colorado (the "District"), by and through its attorneys, pursuant to F.R.C.P. 60(b)(5) and (6), hereby moves the Court to modify the Order Approving Program for Limited English Proficient Students of August 17, 1984. In support of this motion, the District states:

1. On November 3, 1980, the Plaintiff-Intervenors filed a supplemental complaint in intervention in this action that alleged, *inter alia*, violations of the Equal Educational Opportunities Act of 1974 ("EEOA"), 20 U.S.C. §§ 1701 *et seq.*

2. On December 30, 1983, this Court found that the District had failed to satisfy the requirements of § 1703(f) of the EEOA and ordered the "development of remedies for the discrete issues discussed in [its Memorandum Opinion and Order on Language Issues]." Keyes v. School Dist. No. 1, 576 F.Supp. 1503, 1522 (D. Colo. 1983).

3. Following the Court's ruling, the parties submitted to the Court a proposed settlement of the language issues. The terms of the settlement were set forth in the parties' Joint Exhibit #1, "Denver Public Schools: A Program For Limited English Proficient Students" ("LEP Program"). A copy of the LEP Program is attached as Exhibit 1.

4. On August 17, 1984, the Court entered an Order Approving Program for Limited English Proficient Students ("1984 Order") directing the District to implement the settlement in accordance with the submitted terms. A copy of the 1984 Order is attached as Exhibit 2.

5. Since the entry of the 1984 Order, the District has been in compliance with EEOA § 1703(f) and has implemented the terms of the LEP Program to the greatest practicable extent. As a result of the significantly changed conditions described below, the District now moves for a modification of the 1984 Order insofar as is necessary to permit appropriate revisions of the LEP Program.

6. Of particular relevance to the Court's consideration of the District's motion is the fact that the specific elements of the LEP Plan were never contemplated to be rigid, immutable mandates. The language of the 1984 Order itself suggests that no permanent injunction was intended, inasmuch as the essential "question of continuing jurisdiction of this court [was] reserved for later decision." Although the Court also deferred its "determination of methods for reporting on the implementation of [the LEP Program]," the District has seasonably reported to the Plaintiff-Intervenors on the LEP Program, and during the ten years it has been in effect, the parties have agreed to numerous changes in various details of the plan so that its objectives may be achieved more readily.

7. Recently, the Supreme Court announced a new, more flexible standard for modification or termination of orders under Rule 60(b), F.R.C.P., and has made clear that federal law does not favor permanent decrees in cases involving the reform of public institutions. Bd. of Educ. of Oklahoma City v. Dowell, 498 U.S. 237, 246-50 (1991); Rufo v. Inmates of Suffolk County Jail, 112 S.Ct. 748, 757-62 (1992).

8. Modification of a decree is warranted under Rule 60(b) where "a significant change in circumstances warrants revision" The "significant change" may be "in factual conditions or in law." Rufo, 112 S.Ct. at 760. A moving party may demonstrate a change in "factual conditions" by showing: (a) that compliance with the decree has become "substantially more onerous"; (b) that a decree has proven "to be unworkable because of unforeseen obstacles"; or (c) that "enforcement of the decree without modification would be detrimental to the public interest." *Id.*

9. In the present case, the change of circumstances and the significance of the change are indisputable. The LEP Program has grown far larger and the number of students served has grown more dramatically than was anticipated when the plan was devised by the District and approved by the Court.

10. When the supplemental complaint dealing with language rights was tried to this Court, 3,300 children within the District were classified as Limited English Proficient ("LEP"). Keyes v. School Dist. No. 1, 576 F.Supp. 1503, 1507 (D. Colo. 1983). Since that time, the number of LEP students has increased dramatically to 9,400 in the 1988-89 school year (DPS Ex. E-6, p.68),¹ 13,200 in the 1992-93 school year (DPS Ex. E-10, p.19), and 14,511 today.

11. As the number of LEP students has significantly increased, so has the number of District schools offering bilingual programs. At the elementary level, the number of schools offering bilingual programs has increased from eleven in the 1984-85 school year (LEP Program, p.14) to forty today. At the middle school level, there were three schools offering bilingual programs in the 1988-89 school year (DPS Ex. E-6, p.67), six in 1992-93 (DPS Ex. E-10, p.19), and eleven today.

12. While the District has made strenuous efforts to recruit and hire qualified personnel, the competition for the limited number of potential candidates in the labor pool, the increase in the number of LEP children, and the increase in the number of schools offering bilingual programs has made it practically impossible for the District to fully staff the expanded program.

13. The District's efforts to recruit and hire additional qualified personnel for and to otherwise support the LEP Program is further constrained by financial considerations, as the District's annual revenues for all purposes have failed to keep pace with the ever-increasing costs of school operations.

14. The changes that have occurred during the last ten years ultimately have rendered the LEP Program unworkable in its present form. The District's efforts to reach agreement with the Plaintiffs-Intervenors as to modifications that might be made at this time have not been successful. Indeed, Plaintiff-Intervenors' recent Motion for Civil Contempt appears to signal the return of this case to an adversarial footing.

¹ "DPS Ex. ____" refers to Defendants' exhibits admitted during the August 1994 hearing conducted with regard to Defendants' Motion to Terminate Jurisdiction.

15. The District believes the time has come for the parties and the Court to revisit the question of the practicability of the LEP Program in light of circumstances existing today and to address, if necessary, the jurisdictional issue that was deferred in 1984. Accordingly, the District respectfully requests that the Court enter an order:

A. Establishing a schedule for filing by the District of its proposed modifications of the LEP Program;

B. Providing Plaintiff-Intervenors an opportunity to submit a written response to the District's proposed changes;

C. Setting the matter for hearing, if necessary, to determine whether the proposed modifications comport with § 1703(f) of the EEOA and, if so, whether implementation of the LEP Program as modified warrants continuation of the Court's jurisdiction.

DATED this 3rd day of March, 1995.

Respectfully submitted,

Phil C. Neal
NEAL, GERBER & EISENBERG
Two North LaSalle Street
Suite 2300
Chicago, Illinois 60602
(312) 269-8000

Michael H. Jackson
SEMPLE & JACKSON, P.C.
The Chancery, Suite 1603
1120 Lincoln Street
Denver, Colorado 80203
(303) 595-0941

Attorneys for Defendant
School District No. 1,
Denver, Colorado

By Michael H. Jackson

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing MOTION OF DEFENDANT SCHOOL DISTRICT NO. 1 TO MODIFY THE LANGUAGE RIGHTS ORDER OF AUGUST 17, 1984 was mailed, postage prepaid, on this 3rd day of March, 1995, addressed to:

Gordon G. Greiner
HOLLAND & HART
555 17th Street, Suite 2900
Denver, Colorado 80201

Norman J. Chachkin
NAACP LEGAL DEFENSE AND
EDUCATION FUND, INC.
16th Floor
99 Hudson Street
New York, New York 10013

Attorneys for Plaintiffs

Peter Roos, Esq.
MULTICULTURAL EDUCATION, TRAINING
AND ADVOCACY, INC.
524 Union Street
San Francisco, California 94133

Albert H. Kauffman, Esq.
MALDEF
140 East Houston, Suite 300
San Antonio, Texas 78205

Attorneys for the Plaintiff-Intervenors

Gale A. Norton, Attorney General
William E. Thro, Assistant Attorney General
STATE OF COLORADO
Department of Law
1525 Sherman Street, 5th Floor
Denver, Colorado 80203

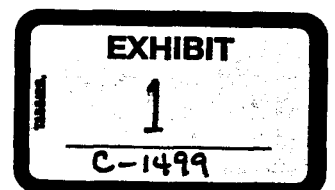
Attorneys for Intervenors

Spinda Alexander

EXHIBIT 1

DENVER PUBLIC SCHOOLS

A PROGRAM FOR LIMITED ENGLISH PROFICIENT STUDENTS



I N D E X

Chapter 1: Student Identification and Assessment	1
Chapter 2: Personnel	6
Chapter 3: Elementary Program	14
Chapter 4: Secondary Program	23

Chapter I

Student Identification and Assessment

The Denver Public Schools shall identify all Limited English Proficient students who enroll in its schools for the purpose of providing them with an appropriate educational program.

I

Home Language Questions

- A. The first step in the identification process shall be to determine if a student is potentially Limited English Proficient. All students so identified will be assessed pursuant to the procedures set forth in Section II for the purpose of making a final determination of whether a student is Limited English Proficient.
- B. As early as possible in the second semester of the 1983-1984 school year, all students in the District will be given a Home Language Questionnaire. Those pupils currently identified as Lau A, B, or C need not be reidentified. This questionnaire will ask two questions: (1) Was the first language spoken by the student a language other than English? and (2) Is there a language other than English spoken in the student's home?
- C. The questionnaire will ask the questions in the five languages most commonly found among Denver Public Schools students.
- D. If the questionnaire is not returned within ten school days, a person designated at each school site will make reasonable efforts to contact the parents. That person also shall seek, from the outset, to assist any parent thought to speak a language other than English who might not understand the questionnaire. Special emphasis will be placed on families who speak a language other than those five most common.
- E. Each child for whom the answer to either question asked in Section I:B is "yes," each child referred by a teacher as coming from a home in which a language other than English is spoken, and each student for whom a questionnaire is not returned shall be referred for assessment as per section II of this chapter. Said assessment shall be completed by the end of the school year 1983-1984.
- F. Beginning in the 1984-1985 school year, the two questions set forth in section I:B shall be added to the enrollment form known as the "Registration Card." Each new student shall have such a form and shall answer the two additional questions. The form shall be returned to the school within ten school days of enrollment. A letter will accompany the form which shall translate the two questions in the five most common languages. If not returned, the procedures set forth in sections I:D and I:E shall be followed.

- G. Each child for whom the answer to either question is "yes", each student for whom a registration card does not reflect an answer to the language question, and each child referred by a teacher as coming from a home in which a language other than English is spoken shall be referred for assessment per section II of this chapter. Said assessment shall be completed by October 1 of the relevant school year.
- H. For all students who enter the Denver Public Schools during an academic year, one or both parents, at the time of the students' initial enrollment, shall complete the enrollment card answering the two questions set forth in section I:F of this chapter. Each said student who answers either question "yes" shall be assessed per section II of this document within 30 days of enrollment. In grades 9-12 the student or parents shall answer the required questions.
- I. The cumulative folder of each student shall include the answers to the two questions about language asked under this section.
- J. The principal at each school site shall have the responsibility to ensure that the information prescribed in this section is correctly compiled.

II

Assessment

Each student identified through the processes set forth in section I as having either a first language other than English or having come from a home in which a language other than English is utilized shall be assessed in order to make a final determination if the student is Limited English Proficient.

- A. Each student so identified through the processes set forth in section I shall immediately have his name referred to the Denver Public Schools Bilingual/English as a Second Language Office which will have the primary responsibility for ensuring that the assessments are conducted within the time frames required by this plan. Where appropriate, the Bilingual/English as a Second Language Office staff may utilize the services of appropriate school site personnel, but such a delegation shall not remove their responsibility.
- B. Each such student shall be given an oral proficiency test as set forth in section V. Each such test shall be conducted in conformity with the instructions of the test publisher. Additionally, the person conducting the test shall have proficiency in English and wherever possible shall have proficiency in the student's home language.

- C. Any student who is determined by the terms of the test to be Limited English Proficient or whose English skills are so limited that testing would be inappropriate shall be classified as Limited English Proficient (Lau A and B) and thus entitled to a program as set forth in this document.
- D. Each student identified through the processes set forth in section I at grades 2 and above shall be given the language and reading sections of the Comprehensive Test of Basic Skills (CTBS). Each student whose academic performance falls at or below the 30th percentile at the elementary level and at or below the 40th percentile at the middle and high school levels on either the total language or total reading section shall be determined to be Limited English Proficient (Lau C). For those students between the 30th and 40th percentile at the elementary level, a committee composed of three persons with training in second language acquisition (at least one of whom shall be a certificated staff member of the Bilingual/English as a Second Language Office) shall conduct further assessments to determine if a student should be considered Limited English Proficient. Subject to the provision in Section III, each such student shall be entitled to a program as set forth in Chapters 3 and 4.
- E. No child shall be denied services pending completion of assessment as set forth in this section.
- F. An accurate census setting forth the number of Limited English Proficient students by grade, language group, and school shall be published by the District no later than October 15 of each year.

III

Reclassification

Each student initially identified as Limited English Proficient shall remain so classified and entitled to a program under this plan until it is determined that he or she is English proficient.

- A. A student shall be determined to be English proficient if the student has
 - 1. been determined to be English proficient on an approved oral proficiency test, and
 - 2. scored above the 30th percentile at the elementary level and above the 40th percentile at the middle and high school levels, if a committee as constituted in II:D has approved reclassification, subject to the provision of section III:B.
- B. A student who is determined to be Limited English Proficient only because of his or her score on the CTBS as set forth herein, including

the committee review provision at the elementary level, may be reclassified as English proficient after two school years.

- C. The student's parents shall be informed through their primary language whenever a determination has been made that the student should be reclassified as English proficient. The parents and the student, if the student is in grades 9-12, shall be given a reasonable opportunity to present evidence that the student should not be reclassified. If the District decides to reclassify the student over the parents' objections, the parents shall be informed in their primary language of the right to appeal the decision to the Superintendent. In that event, the student shall remain classified as Limited English Proficient pending the Superintendent's review.

IV

Post-Reclassification Reassessment

- A. The progress of each student who formerly was determined to be Limited English Proficient and who has been reclassified as English proficient and consequently transferred out of the bilingual or English as a Second Language program, shall be monitored for one year following reclassification to ensure that reclassification was correct. The District will designate by September 15, 1984, a specific office which will be responsible for implementing this provision.
- B. Each reclassified student shall be given the CTBS at the end of the first year of the student's removal from a program. Should the student's scores either (1) fall below the 25th percentile on either of the language subparts or (2) decline by five or more percentile points from the student's reclassified position, the student should be referred to a committee before the beginning of the following school year to determine if the student should be reclassified as Limited English Proficient. The committee shall be composed of the student's classroom teacher, a professional from the Bilingual/English as a Second Language Office, and at least one other person with training in second language acquisition and methodologies. This committee will have the authority, subject to the parents' approval, to reclassify the student as Limited English Proficient; such reclassification will entitle the student to all the rights that such a classification entails.
- C. Each classroom teacher of any student reclassified within a year shall be informed of that fact. Upon presentation of evidence from the teacher that such a student is unable to maintain the level of his classmates, a principal may request that the committee, as set forth in section IV:B, convene to determine if this reclassification was premature.

Approved Oral Proficiency Tests

There are a number of oral proficiency tests on the market. Many of these are considered unreliable, invalid, or both. Only tests which are demonstrably valid and reliable as appropriately reflecting the language skills of Denver students should be utilized in meeting the terms of this plan.

- A. For the 1983-1984 and 1984-1985 school years, only the following tests should be used for oral language assessment:
 - 1. The Bilingual Syntax Measure (BSM) I - grades K-2
 - 2. The BSM II - grades 3-12
 - 3. The Language Assessment Scale (LAS) I - grades 1-5
 - 4. The LAS II - grades 6-12.
- B. Should the District subsequently decide to utilize another test or tests, it shall so inform the plaintiff's intervenors at least 60 days before implementation and shall provide them with all supporting material.

Chapter 2

Personnel

I

Policy

- A. The Board of Education shall seek to staff bilingual classrooms with teachers who have demonstrated an acceptable ability to speak and write in the students' native language and in English and who otherwise are skilled, as established by the Board of Education, in addressing the special needs of students with limited proficiency in English.
- B. The Board of Education shall seek to staff English as a Second Language classrooms with teachers who have the special training necessary to address the special needs of students with limited English proficiency.

II

Matching Students with Teachers

- A. By the end of the 1983-1984 school year, the Denver Public Schools will conduct a survey which will identify
 - 1. the number of teachers needed to fill designated bilingual classrooms
 - 2. the teachers in the District who are fully competent to fill the position of a bilingual teacher as described in section IV below ("Qualified Bilingual Teacher")
 - 3. the teachers in the District who meet the language requirements to be a Qualified Bilingual Teacher but who do not meet one or more of the other requirements
 - 4. the teachers who have applied to the District for a teaching position and who meet the requirements of a qualified Bilingual teacher but who do not currently hold a Denver Public Schools teaching position
 - 5. the number and location of each designated bilingual classroom that is not served by a Qualified Bilingual Teacher.
- B. Based on the results obtained from the survey, the Department of Personnel Services will post vacancies for each designated Bilingual classroom that does not have a qualified Bilingual teacher. The posting shall reflect the special qualifications required. Current assignments will remain in force until replacements, in accordance with the rules stated in C below, are identified.

C. The Department of Personnel Services will designate one person who shall have among his or her responsibilities the obligation to recruit to fill positions in which a Qualified Bilingual Teachers is required. Preference for consideration for these positions shall be given in the following order (Preference System):

1. Qualified Bilingual Teachers who presently work within the District
2. a teacher who has taught in a Denver Public Schools designated bilingual classroom for two years or more as of June 1984, who has met the oral proficiency requirement, and who has enrolled in a program to obtain all other requirements to be a Qualified Bilingual Teacher
3. Qualilfied Bilingual Teachers from out of the District who apply for a position
4. a teacher, either within or without the District, who has met the oral proficiency requirement and who has enrolled in a program to obtain all the other requirements to be a Qualified Bilingual Teacher
5. a teacher within the District who has not met any of the criteria to be a Qualified Bilingual Teacher. (No teacher shall be assigned to a designated bilingual classroom, except on a short-term emergency basis, who has not minimally completed one of the summer inservice training programs leading toward qualifications as a Qualilfied Bilingual Teacher.)

All other employment criteria of the Denver Public Schools will apply to such applicants.

D. No teacher shall be assigned to a designated bilingual classroom if a teacher with a higher preference is available. Any teacher who fills a position in a designated bilingual classroom and who is not a fully Qualified Bilingual Teacher must engage in a course of study leading to the designation of Qualified Bilingual Teacher. That course of study must be designed to be completed within two years. The Department of Personnel Services shall retain on file documentation that each underqualified teacher is making progress toward becoming a Qualified Bilingual Teacher within the appointed time frame. No underqualified teacher shall be retained in such a bilingual position for more than two years. No Preference 5 teacher shall be continued beyond the end of the semester in which a teacher with a higher preference becomes available.

E. These designated bilingual positions are not to be filled from in-school transfers within an individual building or otherwise unless the qualifications herein listed on a Districtwide basis are used. The Department of Personnel Services shall be responsible to ensure such conformity.

- F. Contract teachers who previously taught in designated bilingual classrooms and are replaced because of insufficient bilingual qualifications must be offered another teaching position within the District in accordance with District procedures for administrative transfers.
- G. In January of each school year beginning in 1985, the Denver Public Schools will update the data collected in the survey which is described in II:A and will proceed to fill positions in designated bilingual classrooms as set forth in this section.

III

Toward Skills Improvement

- A. Continued upgrading of the skills of all personnel who must meet the needs of students with limited proficiency in English but who are not yet fully qualified is desirable.
- B. A trained person in the Department of Personnel Services shall have the responsibility to counsel teachers regarding programs leading to designation as qualified Bilingual teacher or English as a Second Language Teacher and to otherwise counsel teachers regarding programs designed to improve their skills in working with students with limited proficiency in English.
- C. A systematic, summer inservice training program will be developed and offered in the summers of 1984, 1985, 1986, and thereafter as necessary. It shall be in response to an annual assessment of needs conducted by the Bilingual Office. The program shall be open to all school personnel and required for two years of all those teachers who teach in bilingual and English as a Second Language programs unless they have obtained state endorsement. It should have the following minimal components:
 - 1. improvement of teachers' language skills in the appropriate languages other than English
 - 2. knowledge about the cultural backgrounds of those students with limited proficiency in English
 - 3. instructional methods for meeting the needs of those students with limited proficiency in English
 - 4. adaptation and utilization of curriculum to meet the needs of those students with limited proficiency in English
 - 5. assessment of students with limited proficiency in English for purposes of identification and educational diagnosis

6. methods of working with the parents of students with limited proficiency in English and methods of improving school-community relations
 7. advancement of knowledge about legal requirements concerning Bilingual/English as a Second Language education.
- D. The summer inservice training program shall be offered for the purpose of qualifying teachers to become Qualified Bilingual and English as Second Language Teachers. It shall include the components listed in III:C and shall be required of all designated bilingual or English as a Second Language teachers who do not have a state endorsement unless such a teacher has filed with the Department of Personnel Services, at least 20 days before the beginning of the program, a plan to obtain an endorsement through an institution of higher education within two years and has submitted evidence that a minimum of six hours of instruction will be pursued during relevant summers. Failure to make progress toward completion of the program shall result in removal from a position authorized under this agreement, absent a showing of good cause.

The summer inservice training program shall have the following characteristics:

1. It shall be for a minimum of three weeks, six hours per day, for five days per week during the first summer that a teacher participates.
2. It shall be for a minimum of two weeks, six hours per day, for five days per week during the second summer that a teacher participates.
3. A certificate of satisfactory completion shall be offered at the end of each session if the participant has so completed the work as measured by a reliable instrument.
4. During the school year following each session, the instructors or some other teacher previously designated as a Qualified Bilingual Teacher shall spend a minimum of six hours in the classroom of each participant for the purpose of assisting the participant to implement the knowledge gained in the summer session.

This inservice training program will be contracted for with an institution of higher education. If college credit can be arranged and if the teacher wishes it for recertification or advancement on the salary schedule, the tuition will be paid by the teacher. The teachers in the Bilingual/English as a Second Language program, whose attendance is required at the inservice training program, will be reimbursed at the current inservice training rate for teachers.

- E. An inservice training program individually tailored for each designated school identified through the process set forth in Chapter 3, Section I, shall be developed no later than November 1, 1984. This program shall use District and out-of-District personnel and shall at a minimum
1. provide five hours of inservice training for all school personnel
 2. provide five hours of orientation for parents of students who will be in attendance at the school during the 1985-1986 school year.
- F. Each teacher designated by the process set forth in Chapter 3, Section I: shall be accorded the following training and privileges:
1. Such teachers shall have the right to participate in a program designated to impart those Spanish language skills tested by the bilingual teachers' examination. Such program shall be offered through the Staff Academy beginning in the 1984-1985 school year.
 2. If the teacher does not have a bilingual endorsement, the District shall offer and the teacher shall attend a three-week training program in the summer of 1985 and a two-week program in the summer of 1986 which will meet the standards set forth in the section.
 3. During the 1984-1985 school year, the teacher so designated shall be released from classroom duty for at least five school days to observe teachers in schools already conducting a bilingual program. This release time will be approved in accordance with District policies.
- G. An inservice training program shall be conducted to introduce the curriculum, the assessment procedures, accountability devices, and other relevant material. The program shall be initially conducted within two weeks of the opening of the 1985-1986 school year and shall be required of all English as a Second Language teachers and teachers with designated bilingual classrooms. The program shall be repeated annually within the same time frame for all new English as a Second Language/bilingual teachers and shall be of six hours duration.

IV

Qualified Bilingual Teachers - Standards and Assessment

- A. A Qualified Bilingual Teacher shall be one who has met all of the following criteria:
1. a passing score on the oral language component of the New Mexico Test of Spanish Language Skills.
 2. a passing score on reading and writing components of The New Mexico Test of Spanish Language Skills.

3. a state bilingual endorsement or successful completion of the required inservice training set forth in III:D of this chapter.
- B. Any teacher who is assigned to a designated bilingual classroom who fails to meet either of the language requirements to be a Qualified Bilingual Teacher shall immediately enroll in a language course of study designed to aid the teacher in meeting those criteria. Such teachers must enroll in a District approved program. Those teachers who fail to complete the program within two years shall be reassigned from the bilingual program. The District shall maintain a list of each such teacher, which list shall state when the teacher entered the program.
 - C. All assessments shall be conducted in conformity with the publisher's instructions.
 - D. In the event that designated bilingual classrooms in languages other than Spanish should be established, the District will propose oral and written language assessment devices to measure those languages. The procedures set forth in IV:A and IV:B shall be operable.
 - E. Every teacher presently teaching in a designated bilingual classroom will be assessed to determine if he or she is a Qualified Bilingual Teacher as set forth herein. This assessment shall be completed by the end of the 1983-1984 school year.
 - F. A notice shall be sent to every teacher in the Denver Public Schools and to each school of education at an institution of higher education in Colorado and other states in which Denver Public Schools usually recruits. Such notice shall be sent by May 1, 1984, and shall inform them that the District is seeking to identify Qualified Bilingual Teachers or others who would like to be so designated. The notice shall further provide the name of the person in the Department of Personnel Services who is responsible for counseling teachers regarding these positions.
 - G. The notice set forth above in IV:F shall be posted annually no later than May 15 of the relevant school year.

V

Qualified English as a Second Language
Teacher - Standards and Assessment

- A. A Qualified English as a Second Language Teacher is one who has an endorsement from the state of Colorado as a teacher of the linguistically different or who has successfully completed the two years of Denver Public Schools inservice training as described in III:D of this chapter.

- B. Preferences for filling positions which require a Qualified English as a Second Language Teacher shall be as follows:
1. a Qualified English as a Second Language Teacher who speaks a language other than English which is in common usage in the Denver Public Schools
 2. a Qualified English as a Second Language Teacher
 3. a teacher who has successfully completed one session which meets the criteria set forth in III:D of this chapter.
- C. The Department of Personnel Services shall post all positions for which an English as a Second Language teacher is required and designate the position as English as a Second Language.
- D. The Department of Personnel Services shall be responsible to ensure that the preference system is utilized in placing English as a Second Language teachers. In the event that a Qualified English as a Second Language Teacher cannot be found to fill that position, the person filling that position must satisfactorily complete the requirements within two years.
- E. No teacher shall be retained in an English as a Second Language position without achieving the necessary qualifications for more than two years if a more qualified teacher is available.

VI

Unique Personnel Matters

- A. The Denver Public Schools has a significant population of students with limited proficiency in English who speak many languages, including various Asian languages.
- B. These students with limited proficiency in English from various language backgrounds have special language and cultural needs.
- C. There are few teachers who can meet the designation of Qualified Bilingual and English as a Second Language Teachers in these various languages.
- D. Where there are identified qualified Bilingual and English as a Second Language Teachers available, these teachers will be utilized to provide the greatest contribution to the needs of these children.

- E. The District will seek to hire a sufficient number of persons to meet the present description and qualifications of Paraprofessional III to assist teachers to meet the linguistic/cultural needs presented by these students with limited proficiency in English.
- F. Personnel applying for Paraprofessional III positions or currently holding such Paraprofessional III positions will meet minimum performance standards on (1) an English oral language proficiency test and (2) an English reading or writing test adopted or developed by the District's Bilingual/English as a Second Language Office.
- G. A ratio of Paraprofessional III's to students will be 1 to 15.
- H. Though important, paraprofessionals shall not be a substitute for exposure of these students to Qualified Bilingual and English as a Second Language Teachers as set forth in the following sections.
- I. No later than the beginning of the 1984-1985 school year there shall be established an Advisory Committee for Asian language students which committee shall serve in the same capacity as the Hispano Education Lay Advisory Committee (HELAC) and the Black Education Advisory Committee (BEAC). As with HELAC and BEAC a person shall be designated to assist with and coordinate the activities of such committee.

Chapter 3
Elementary Program

I

School Designation:
The 1984-1985 School Year

- A. During the 1984-1985 school year, the eleven schools presently designated as bilingual schools shall retain that designation. All requirements set forth in the personnel section of this agreement shall be honored.
- B. Children of limited English proficiency not in a designated bilingual school or otherwise in a bilingual program shall receive instruction from a Qualified English as a Second Language Teacher as defined in this agreement. This specific provision shall go into effect at the beginning of the second semester of the 1984-1985 school year. With respect to this provision:
 - 1. English as a Second Language shall be provided for a minimum of 30 percent of the school day, or two hours, whichever is greater, for any child identified as Limited English Proficient on the grounds that the child has not met the oral language standards established herein (Lau A or B).
 - 2. English as a Second Language shall be provided for a minimum of 10 percent of the school day or one hour, whichever is greater, for any child identified as Limited English Proficient solely because that child has not met the reading or language arts (CTBS) standards for identification (Lau C).
 - 3. The student-teacher ratio in the English as a Second Language program shall be no greater than 15 to one.
 - 4. In a designated bilingual classroom the bilingual teacher will provide the English as a Second Language instruction provided in this part.
- C. Based on the results of the student language assessment being conducted pursuant to this agreement, the District shall make by October 1, 1984, a determination of the number of English as a Second Language teachers needed to implement this agreement.
 - 1. The District shall determine within ten days thereafter the shortfall, if any, that exists between available Qualified English as a Second Language Teachers and the number needed to implement this agreement.

2. The District shall recruit sufficient numbers of teachers either from within or outside the District to meet this shortfall. To the extent that any of these teachers are not qualified English as a Second Language teachers, they will be required to participate in a three-week inservice program to be given in January 1985. This inservice program shall meet the standards set forth in the Chapter 2 of the agreement for qualifying a teacher to become a qualified English as a Second Language teacher. The remainder of the required training shall be given in the summer of 1985.
 3. During the fall of 1984, the District shall make affirmative efforts to find places for those tutors currently serving in the English as a Second Language program. Those tutors will be replaced by the above described English as a Second Language Teachers at the beginning of the second semester of the 1984-1985 school year.
- D. All schools which meet the following criteria shall be designated as bilingual schools by September 15, 1984, on the basis of the student identification process being undertaken pursuant to this agreement:
1. K-6 schools which have 70 or more students identified as Limited English Proficient
 2. K-3 schools which have 40 or more students identified as Limited English Proficient
 3. K, 4-6 schools which have 30 or more students identified as Limited English Proficient.
- E. In addition to those schools identified in I:D above, at least one school shall be designated as "bilingual" no later than September 15, 1984, in each zone that serves as a feeder zone for a given middle school whenever
1. At least three grade levels in the zone have ten or more Limited English Proficient students of the same language
 2. In the event that a zone does not have this number of students due to a middle school feeder plan adopted solely to meet the desegregation order, students in any school with ten or more children of limited English proficiency shall be assigned to the nearest designated bilingual school with space available.
 3. In designating a bilingual school in these zones, preference should be accorded to the school with the largest number of Limited English Proficient students already in attendance.
 4. In choosing a school or schools, due regard will be given to the consequences of the choice on ethnic balance. If it is projected

that a decision will result in a change in such balance of greater than 5 percent in any school, the District will inform each of the parties to this case of that fact at least 60 days prior to the implementation and will further provide them with all data supporting their choice of school(s).

5. Should a Limited English Proficient student attend a school which is not designated bilingual but which is within one mile of a bilingual school, the student may transfer to the bilingual school if space is available.

F. At each school designated by Section I:D and I:E above, the following steps shall be taken:

1. By October 1, 1984, teachers shall be informed that the school will be a designated bilingual school during the 1985-1986 school year.
2. At least one teacher at each grade level shall be designated by October 15, 1984, to secure training necessary to meet the needs of the Limited English Proficient children. Irrespective of this designation, no teacher will actually serve in a designated classroom whenever a teacher with a higher preference, as set forth in this agreement, is available. For every grade level at which no teacher agrees to the designation, the District shall identify a person elsewhere in the District who is willing to undergo the necessary training set forth in "G" below. The principal of each designated bilingual school shall inform the Department of Elementary Education by October 25, 1984, of each such designated teacher. If no teacher is designated for a grade level, that fact shall be conveyed to that department.

II

School Designation: 1985-1986 and Thereafter

- A. All schools designated to be bilingual schools by reason of the standards set forth in I:D and I:E shall offer a bilingual program in the 1985-1986 school year. That program shall include at a minimum one classroom at each grade level which is designated a bilingual classroom taught by a Qualified Bilingual Teacher, or if none is available, by a teacher who has the highest preference available.
- B. No later than April 30 of each year beginning in 1985, the District shall make a written assessment of those schools likely to meet the standards for designation as bilingual schools in the subsequent school year utilizing the standards set forth in sections I:D and I:E above, and the schools so identified shall be designated bilingual schools for the subsequent year.

- C. Any school, once designated as bilingual, may be denied that designation if it falls below the standards set forth in I:D in three consecutive years. Should that occur, the students in the school would be accorded a bilingual program if the standards of I:E are met.
- D. An English as a Second Language program as set forth in I:B shall be offered to each Limited English Proficient child who is not served in a designated bilingual classroom.

III

Curriculum Development and Implementation

- A. The present bilingual curriculum should be evaluated and upgraded to ensure that it is comprehensive. The bilingual curriculum will include kindergarten through grade 6. Each curriculum will contain a scope and sequence.
- B. The bilingual curriculum shall require the same skill development and content as the curriculum required of non-bilingual students. Additionally, it shall include development of English as a Second Language, including skills in speaking, understanding, reading and writing, and the use of Spanish (or any other language used in the bilingual program) as a medium of instruction.
- C. Implementation Schedule
 - 1. The oral language curriculum shall be developed by the opening of the 1984-1985 school year.
 - 2. The remainder of the curriculum development shall be completed no later than the beginning of the 1985-1986 school year.
- D. No later than July 1, 1984, a committee shall be established to develop the bilingual curriculum. The curriculum committee shall include
 - 1. elementary curriculum development specialists who have participated in the development of the District's non-bilingual curriculum
 - 2. curriculum development specialists who previously contributed to the development of the bilingual curriculum
 - 3. teachers who have taught in designated bilingual classrooms for a minimum of two years,
 - 4. appropriate language development specialists
 - 5. at least two specialists who instruct relevant subject matter at an institution for higher education.

Subcommittees may be established to address particular issues.

- E. Each bilingual and English as a Second Language teacher shall be provided a copy of the curriculum or the relevant portions thereof.
- F. At a minimum, one person from the Bilingual/English as a Second Language Office shall be designated to implement and coordinate the English as a Second Language curriculum. One person will be designated to coordinate and implement the bilingual curriculum. The duties will include
 - 1. ensuring that adequate materials exist for implementing the language curriculum
 - 2. establishing and implementing a uniform standard for the introduction and development of English
 - 3. providing the necessary instructional support to teachers of Limited English Proficient children.
- G. The curriculum committee, in conjunction with the development of the curriculum, shall prepare an analysis of existing materials and shall develop recommendations for a common set of textbooks. An acquisition plan will be adopted by September 1985 which will assure that a common reading textbook shall be in use no later than September 1989 and that progress will be regularly made toward common textbooks in other areas.

IV

Measurement of Progress

- A. A set of examinations designed to measure student progress in mastering the curriculum shall be developed in conjunction with and in the same time frame as the development of the curriculum. These examinations shall be given in nine-week intervals and shall measure whether a student has achieved mastery of a set of objectives established for such an interval.

At a minimum, grade-appropriate examinations shall be established for mathematics. In addition, such examinations shall be developed to assess English oral language development and English reading and writing development.

- B. Within two weeks of the beginning of school or within two weeks of the entry of a Limited English Proficient student into a program, the teacher shall determine the appropriate level in the curriculum in which the child's instruction should begin. The teacher shall maintain the instruments used for this determination.

This placement shall thus determine the point at which the interval testing should begin.

C. Results of the assessment system developed herein shall at a minimum be made available to the parents or guardians of the child, to the principal of the school that the child attends, and to the Bilingual Office. The District shall prepare a quarterly Analysis of Progress of the children in each designated classroom and of children served by each English as a Second Language teacher.

1. The Analysis of Progress shall include a listing of bilingual classroom programs in which 25 percent or more of the students failed to achieve mastery of 80 percent of the objectives examined in section IV:A during two sets of interval examinations.
2. A professional from the Department of Elementary Education, the principal, a language development specialist from the Bilingual/English as a Second Language Office, and the teacher of the class identified through the Analysis of Progress set forth in Section IV:C:1 shall meet to discuss that designated classroom. This meeting shall occur within 30 days of the release of the Analysis of Progress. A written plan of recommendation shall be developed as a result of this meeting.

V

Parental Oversight

- A. A Districtwide advisory committee shall be established within 30 days of the beginning of the 1984-1985 school year and shall be reconstituted each subsequent year. The committee shall include one parent representative from each designated bilingual school and one representative from each additional school which has 20 or more limited English proficient students. The representatives will be chosen by the parents who shall choose a chairperson.
- B. The Districtwide advisory committee will include the following among its responsibilities:
 1. review and comment on staff-prepared reports on
 - (a) the annual summary of the results of the interval testing, including evaluation of weaknesses reflected by the testing, and recommendations to correct the weaknesses
 - (b) the annual summary of results of the identification-reclassification system
 - (c) progress on implementation of the personnel provisions of this agreement

2. design and implement an annual plan to increase parent involvement in bilingual program activities
 3. develop a training program for new members of the local school bilingual committee (See V:C below.)
 4. review procedures used at designated bilingual schools to select bilingual committee members to ensure their compliance with V:C below
 5. serve as a hearing body for concerns involving parents and school officials regarding structure or operation of bilingual committees at the designated schools
 6. report at least once annually on their activities to the Districtwide School Improvement and Accountability Council and the Board of Education.
- C. Each designated bilingual school shall have an advisory committee chosen by the parents of students in the designated bilingual classrooms. Alternatively, a subcommittee of an existing school site committee can be established to serve this purpose. The committee will include among its responsibilities those allocated to the Districtwide committee but on a school basis.
- D. The committees set forth herein will meet at least once every month during the school year.
- Translators shall be made available to facilitate committee meetings and to assist with the development of the required reports. It is expressly understood that the District discharge its obligation under this provision if it makes a good faith effort to implement it.
- E. The District shall designate a staff member to facilitate and coordinate activities of the Districtwide and designated school committees in their efforts to increase involvement of parents in the bilingual program.

VI

Early Childhood Education

- A. An Early Childhood Education program shall continue to be offered in every designated bilingual school in which it is currently available. The teachers in those Early Childhood Education programs shall be Qualified Bilingual Teachers, or, if none is available, shall be placed in accordance with the preference system set forth in this agreement.

- B. An Early Childhood Education program shall be additionally extended to a minimum of one designated bilingual elementary school each year beginning in the 1984-1985 school year until all such schools have such a program. This provision shall apply only to schools in which 50 percent or more of the previous year's kindergarten was composed of Limited English Proficient students.

VII

Meeting the Needs of Non-Spanish Limited English Proficient Children

- A. In recognition of the fact that at present there are few qualified teachers who speak a language other than Spanish which is the home language of a significant portion of the District student population, those provisions in Sections I and II which call for the establishment of bilingual programs need not be immediately implemented. However, the District shall take the following steps:
1. The District shall develop no later than October 1, 1984, a written recruitment plan to recruit teachers of any language in which there is a shortfall between the needs of students and the available teachers. This plan shall be updated each October 1 and shall be implemented.
 2. Whenever the District is able to hire teachers for these language groups pursuant to this plan, it shall utilize them to provide direct service to children in need.
- B. An English as a Second Language program shall be provided to all non-Spanish speaking Limited English Proficient students in accordance with I:B.
- C. A Vietnamese bilingual program shall be established which shall utilize the services of the two Vietnamese-speaking teachers in the District. This program shall be expanded when additional qualified Vietnamese-speaking teachers become available, in accordance with the guidelines herein established.
- D. Whenever there are 15 or more non-Spanish speaking Limited English Proficient students of one language group in a school, one paraprofessional who speaks that language shall be employed. One additional qualified paraprofessional shall be added for each additional fifteen students up to a required maximum of four such paraprofessionals per school.
1. These paraprofessionals shall meet the standards of a paraprofessional III and shall exhibit sufficient English oral language skills in accordance with VI:F of Chapter 2 of this agreement.

2. If persons meeting these standards are not available, the District shall initiate, by February 1985, a program to recruit and train sufficient numbers of persons to meet the need. It is expressly recognized that the District discharges its obligation under this provision by a good faith recruitment and training effort.
3. This provision shall be implemented in September 1984.

VIII

Miscellaneous Provisions

- A. Any school which has a sufficient number of students and qualified bilingual teachers and which otherwise is not designated a bilingual school may offer a program during the 1984-1985 school year using bilingual methodologies if, in the judgment of the principal, this is desirable.
- B. The District shall implement, no later than September 1, 1984, a policy and procedure to identify gifted and talented children who speak languages other than English. An appropriate curriculum and program shall be developed in conjunction with the development of the bilingual curriculum.

Chapter 4

Secondary Program

I

Middle Schools

- A. At present, all Lau A and B students are clustered in three middle schools. The District will continue this practice although the specific school and configuration may be changed. ;
- B. In any cluster school in which 30 or more of the Limited English Proficient students are Spanish speaking, those students shall be instructed by a Qualified Bilingual Teacher in the following subjects (the "core curriculum"): mathematics, science, social studies, and English. It is expressly understood that one teacher may provide instruction in more than one area if the teacher has the content knowledge in the area.
- C. All Limited English Proficient students who are non-Spanish speaking and all Spanish speaking students who are in the cluster schools and not in a program established pursuant to I:B shall be instructed in the core curriculum by a Qualified English as a Second Language Teacher.

During the spring staffing, the principal shall project his teacher needs at a student-teacher ratio of 15 to 1. During the first two weeks of school, the principal shall request additional staff if the actual ratio exceeds 18 to 1.

II

High Schools

- A. At any high school in which 40 or more Lau A and B Spanish-speaking Limited English Proficient students are in attendance, qualified bilingual teachers will be designated in each of the core area departments (mathematics, English, social studies, and science). In the event that any of these positions is filled by a person with a designation of "5" as set forth in Chapter 2, Section II:C, one Spanish speaking paraprofessional III who meets the standards of VI:F of Chapter 2 shall be assigned for each fifteen students. These paraprofessionals shall be primarily utilized to assist the students to understand those courses.

Any teacher who may be designated because there is not a qualified bilingual teacher, as per this agreement, shall be transferred to another position in accordance with District policy whenever a person with a higher preference becomes available.

- B. Any Limited English Proficient student who is identified as Lau A and B and who is not served pursuant to III:A shall receive a minimum of two periods per day of English as a Second Language instruction provided by a Qualified English as a Second Language Teacher. Instruction shall be provided so that no more than fifteen students are with an instructor at one time.
- C. For each fifteen Lau A and B students of a given language group in one middle school cluster or high school who are not served pursuant to II:A, one paraprofessional III who meets the language standards of VI:F of Chapter 2 shall be assigned to the school. In the event that such paraprofessional persons are not available, the District will establish a program pursuant to Chapter 3, Section VII, D:2.

III

Generally Applicable Provisions--Instruction

- A. No teacher who is designated to be either a bilingual or English as a Second Language teacher under this agreement will lose any seniority rights as a result of such a designation.
- B. The District will conduct a survey of the number and percentage of Limited English Proficient students of each of the five major language groups in each discrete vocational education program and gifted and talented program available at the secondary level. If the percentage of Limited English Proficient students from any one language group in any such program is less than the percentage that this language group represents of the general secondary school population, the District will establish a program to ensure that any linguistic or cultural barriers to participation are overcome. This survey will be completed by February 1, 1985, and affirmative programs to overcome these barriers to participation shall be in place by May 1985. The survey and any written plans shall be made available to the parties to this agreement.
- C. Each student who is Limited English Proficient solely by reason of a score on the reading and/or language arts subparts of the CTBS (Lau C) and who otherwise is not served under this agreement will be given a minimum of one period per day or five periods per week of English as a Second Language instruction taught by a Qualified English as a Second Language Teacher in a student-teacher ratio not to exceed 15 to 1.

This provision may be met through existing staff and/or programs so long as the conditions set forth herein are met.

D. At least one Spanish speaking guidance counselor who has met the language standards to be a Qualified Bilingual Teacher and who otherwise in the opinion of the principal has exhibited an understanding of the needs of Limited English Proficient children shall be assigned to each high school and middle school cluster which is required to assign bilingual teachers pursuant to this agreement.

1. A minimum of one Spanish-speaking guidance counselor will be designated to serve Lau A and B students who are not in a school which has such a counselor. An additional counselor who has met the requirements in III:D shall be hired for every 150 such students.
2. Asian language paraprofessionals hired pursuant to this agreement shall be given training so that they may advise Asian language students on guidance matters.

The District shall develop by September 1, 1984, a plan to recruit qualified Asian language guidance counselors who shall be hired until there is one such counselor for each 70 students of a given language group. It is expressly understood that the District discharges its obligation under this provision by a good faith recruitment and hiring program.

IV

Generally Applicable Provisions-- Curriculum and Accountability

- A. An improved curriculum for bilingual students shall be developed in the core areas. In addition, an improved curriculum shall be developed for English as a Second Language instruction. These curricula shall build upon the elementary bilingual curriculum. Each component of the curriculum shall contain a scope and sequence.

No later than September 15, 1984, a committee shall be established to develop this curriculum. The committee shall include the following persons:

1. curriculum development specialists who have previously developed secondary bilingual curricula
2. teachers who have instructed Limited English Proficient students at the secondary level for a minimum of two years
3. persons with expertise and credentials in each area of the core curriculum

4. at least two specialists from outside the system with appropriate expertise and credentials to be used as consultants as needed

Subcommittees may be established to address particular issues.

- B. A set of examinations designed to measure a student's progress in mastering the curriculum shall be developed in conjunction with and in the same time frames as the development of the curriculum. These examinations shall be given in six-week intervals and shall measure if a student has achieved mastery of a set of objectives established for such an interval.

The results of the assessment system developed herein shall be made minimally available to the parents or guardians of the students, to the principal of the school that the student attends, and to the Bilingual Education Office. The District shall prepare a quarterly Analysis of Progress of the student in each core area course which shall be made available to the parents of each student therein, the principal, and the teacher of such course.

- C. Within two weeks of the beginning of school or within two weeks of the entry of a student into a program, each teacher shall make a determination of the point at which the student is in the curriculum for that subject. The teacher shall maintain the instruments used for this determination. The point so determined shall serve as the point on the curriculum where the student will begin and shall thus determine the point at which the interval testing should begin.

V

Post-Reclassification Reassessment

- A. The progress of each student who formerly was determined to be Limited English Proficient and who has been reclassified as fully English proficient shall be monitored for one year following reclassification to assure that reclassification was correct. The District will designate by September 15, 1984, a specific office which will be responsible to implement this provision.
- B. Each reclassified student shall be given the CTBS at the end of the first year that the student has been removed from a program. Should the student either (1) score below the 25th percentile on either of the language sub-parts, or (2) decline by five or more percentile points from the student's reclassified position, the student shall be referred to a committee to determine if the student should be reclassified as Limited English Proficient. The committee shall be composed of the student's counselor, a professional person from the Bilingual/English as a Second Language Office and at least one other person with training

in second language acquisition and methodologies. This committee will have the authority, subject to parental approval, to reclassify the student as Limited English Proficient, such reclassification entitling the student to all the rights that this classification entails.

VI

Implementation Schedule

- A. Unless otherwise stated herein, this chapter shall be implemented according to the following schedule:
1. The curriculum shall be completed by September 1985.
 2. The middle school provision (section I) shall be implemented no later than the beginning of the second semester of the 1984-1985 school year.
 3. The high school provisions (section II) shall be implemented at North High School and West High School no later than the beginning of the second semester of the 1984-1985 school year.
 4. All other provisions shall be implemented no later than the beginning of the second semester of the 1985-1986 school year.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. C-1499

WILFRED KEYES, et al.,

Plaintiffs,

and

CONGRESS OF HISPANIC EDUCATORS, et al.,

Plaintiff-Intervenors,

v.

SCHOOL DISTRICT NO. 1,
Denver, Colorado, et al.,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

AUG 17 1984

JAMES R. MANSPEAKER
CLERK

ORDER APPROVING PROGRAM FOR
LIMITED ENGLISH PROFICIENT STUDENTS

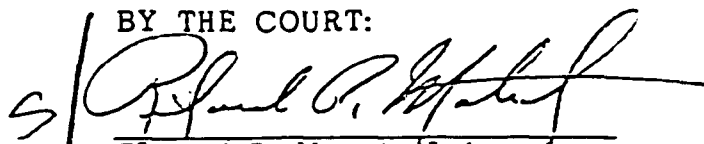
The parties having jointly submitted to this Court "Joint Exhibit #1" as a remedy for the violations found by this Court in its Order of December 30, 1983, and the Court having heard substantial evidence in support of this document denominated, "Denver Public Schools: A Program For Limited English Proficient Students," and it appearing that the requirements of Rule 23(e) of the Federal Rules of Civil procedure have been met,

IT IS HEREBY ORDERED AND DECREED:

The document denominated "Denver Public Schools: A Program For Limited English Proficient Students", submitted to the Court jointly by the parties in settlement of the language issues litigated in this action shall be implemented by the Denver Public Schools in accordance with its terms. The determination of methods for reporting on the implementation of that program and the question of continuing jurisdiction of this court are reserved for later decision.

Dated: August 17, 1984

BY THE COURT:


Richard P. Matsch, Judge

