

# **SPEAKING ENGLISH IN SANTA ANA PROPOSITION 227 THEN AND NOW**

## **SUMMARY**

Allegations have been made that the Santa Ana Unified School District in the wake of the passage of Proposition 227 (1998) has continued to overemphasize bilingual education for children whose primary language is Spanish, at the expense of reasonable progress in their developing basic proficiency in English.

In response to the mandates of Proposition 227, the State Board of Education has issued a series of partial, ambiguous and even contradictory policies, leaving a considerable degree of latitude, but also a notable lack of direction, to individual school districts. Santa Ana, like many other districts, chose to adopt the most liberal interpretations of the proposition, leading to lax implementation of its provisions. Eventually, this led to overuse of the waiver system which permits exceptions to the proposition's mandates. These policies have culminated in an excessively high percentage of students in bilingual education.

As currently structured, lengthy bilingual education programs do not accomplish their goal, or the goal of Proposition 227, within a reasonable time, if at all. That goal is the rapid advancement of students in English proficiency. A review of the bilingual and 2Way programs offered by the district indicates that the length and complexity of these programs, as well as the need to retain children in them for their full course of several years, interfere with the children's acquisition of English language proficiency within a reasonable amount of time. Too much emphasis on "enhancing" their native language skills rather than English fluency and insistence that they learn core curriculum in their own language before they study it in English also hamper their progress and detract from a more rapid advancement in English proficiency. From kindergarten through grade school, these "alternative programs" amount to instruction in a foreign language, parallel to mainstream public school instruction in English.

Because some educators and parents in the Santa Ana Unified School District favor compliance with Proposition 227 and have tried to work for more rapid progress in the teaching and learning of English while others have resisted the proposition's mandates, the debates and decisions on the subject have been contentious. Political pressure by activists has also made the resolution of issues more difficult. The recall of a member of the

Board of Education one year ago (Feb. 4, 2003) brought to the fore once more many unresolved problems, such as procedures in conflict with the law and the limited success of these established programs both in helping students to reach proficiency in English and to meet expectations in academic achievement. The needs and best interests of the children have been overshadowed by political expediency, concern with legal action and rigid educational theory.

At this moment, the Santa Ana Unified School District claims to be engaged in correcting some of the infractions in the administration of bilingual education programs. But the corrections are only partial. Waiver forms have been revised, procedures for the issuance of waivers have been improved, but only for kindergartners. The number of students on waivers is now said to have decreased by about 50 percent but, even if this is true, many more remain. Some schools have phased out bilingual programs but replaced them with 2Way programs which are perhaps even less acceptable. They are structured as if the goal of Proposition 227 were bilingualism rather than rapid English proficiency. Real improvement in the performance of Santa Ana's schoolchildren depends on a genuine commitment on the part of the district's administrators and especially on the part of members of the Board of Education to accept the mandates of Proposition 227 and to implement all of its provisions.

## **INTRODUCTION**

The Grand Jury undertook this study of bilingual education programs in the Santa Ana Unified School District (SAUSD) to verify allegations made in a complaint letter that it had received. It was the intent of the Grand Jury to assess the extent of possible infractions of the law as alleged, to identify practices that might constitute such infractions and to suggest alternatives that might point the district in a new direction. It was also hoped that as problems are solved and solutions found, the atmosphere among the various entities within the Santa Ana educational establishment might become less contentious. That might permit the district not only to help the Spanish-speaking students in the SAUSD achieve greater proficiency in English more rapidly, but also to extend some assistance to immigrant children whose native language is not Spanish. The district needs to set aside political and other extraneous considerations and concentrate on reforms and programs which, for the sake of all immigrant children, will bring it into full compliance with the law.

## **METHOD OF STUDY**

This study was based on interviews with administrators, a school board member, teachers and others in the Santa Ana Unified School District; interviews with administrators in other Orange County school districts; articles and documents gleaned from newspapers and the Internet; documents issued by the State Board of Education and by the California School Boards Association; documents supplied by the office of the Director of Bilingual Education in the SAUSD; relevant sections of the state Education Code; and previous Grand Jury reports in several California school districts.

## **ACRONYMS AND DEFINITIONS**

<b>BMP</b>	Bilingual Maintenance Program “Native language literacy and content instruction are maintained and enhanced even after English fluency is achieved.” (SAUSD Master Plan)
<b>CCR</b>	Coordinated Compliance Reviews
<b>5 CCR 11303</b>	Title 5 – Education; California Code of Regulations
<b>CSBA</b>	California School Boards Association
<b>EL</b>	English Learners
<b>ELD</b>	English Language Development
<b>FEP</b>	Fluent English Proficient
<b>LEP</b>	Limited English Proficient
<b>OCDE</b>	Orange County Department of Education
<b>SAUSD</b>	Santa Ana Unified School District
<b>SBE</b>	State Board of Education
<b>SEI</b>	Structured or Sheltered English Immersion Immersion is a method using the target language (the language to be learned) to teach that language
<b>TBE</b>	Transitional Bilingual Education Program

**Emphases in bold are the Grand Jury’s throughout.**

## **BACKGROUND — THEN**

The passage of Proposition 227 in 1998 presented school districts in Orange County, as in many other counties in California, with numerous challenges in educating thousands of children whose proficiency in English was deficient, extremely limited or simply nonexistent. The problem has been particularly acute in districts, such as Santa Ana, where the percentage of the non-English-speaking student population is very high, in some schools as high as 90 percent or more. Since children who could not understand or communicate in English could not immediately be placed in mainstream classes taught in English, these districts faced the necessity of finding ways to teach them English and, at the same time, ensure that they also learn course content appropriate to their age and grade level. Such a task is daunting in its scope and complexity.

To complicate matters further, the issue of bilingual education (or “alternative programs”) early took on a political coloration. In Santa Ana, activist groups and individuals who took up the “cause” of bilingual education included some members of the Board of Education as well as some principals and teachers. Considering the use of Spanish in the classroom as a symbol of ethnic pride and “immigrant rights,” they came to view and treat bilingual education as a civil rights issue rather than an educational and pedagogical one. Sometimes out of sympathy, sometimes of necessity, administrators and other staff members came to respond accordingly and, eventually, all discussions and decisions were ideologically tainted. Concern for the academic achievement of students and schools fell victim to ideology. Fear, or at least caution, seems to have guided the decisions and choices of elected officeholders and of those who work for them. It would seem that until the recall of Nativio Lopez from the Santa Ana Board of Education one year ago (Feb. 4, 2003), the advocates of bilingual education as a political statement had the upper hand. This conclusion is supported by the fate of two provisions in Proposition 227. Most of the disagreements and acrimony have centered around these two provisions, in Santa Ana as elsewhere.

The first of these provisions required that English learners spend the first 30 calendar days (20 school days) of each school year in a “structured English immersion” class. At the end of that period, the level of their proficiency in English was to be evaluated and they would then be placed in the appropriate program on the basis of that evaluation. The second provision that became a subject of controversy was the issuance of waivers that would place or keep a child in a bilingual program on the sole basis of a parent’s request. Most of these waivers were issued to parents claiming a “special need” on behalf of their child. The proposition specifies

“special needs” (physical, emotional, psychological or educational) as a permissible reason for granting waivers, but interpretations as to what constitutes a special need have varied.

That there is a link between the two provisions has apparently been overlooked, or ignored, by many districts. In Santa Ana, past decisions involving the 30-day assessment period and the granting of waivers have been consistent but contrary to the intent of the proposition. These two provisions and their fate, therefore, need to be examined more closely.

### **Thirty Days of Assessment**

When in doubt about the meaning of new laws affecting education, it is both logical and reassuring for school districts to look to the State Board of Education for guidance. A series of interpretations issued by that Board and the California School Boards Association between 1998 and 2003, some by legal counsel, are inconsistent and two major contradictions run through these attempts to “clarify” the mandates of the proposition. The following is taken from “A Sample Board Policy” issued by the CSBA in 1998 (BP 6174):

*To ensure that the district is using sound methods that effectively serve the needs of English language learners, the Superintendent or designee shall annually examine program results, including reports of the students’ academic achievement and their progress towards proficiency in English ... .*

It would seem reasonable to conclude that the 30-day assessment period would be part of the overall evaluation of the student’s progress toward proficiency in English and would help determine the need for a waiver which has to be requested each year. But, in response to a request for clarification from a school district, a legal opinion was forwarded to it on behalf of the State Board of Education. It refers to Article 3. 311(c) of the proposition which states “the child already has been placed for a period of not less than thirty days during **that** school year in an English language classroom [before issuance of a waiver].”

First, this legal opinion specifies that “the thirty-day placement applies only to waivers for ‘children with special needs.’” Yet, section 311(c) is only one category of children listed under 311. Sections a and b deal with two other categories of children. Second, the opinion also concludes that the 30-day requirement “only applies to the first year the parent or guardian seeks a waiver.” This conclusion is based on the use of the word “that” rather than “each” or “every” in the above quotation (“not less than thirty days during **that** school year.”). But Article 3. 310 begins with the statement “The requirements of section 305 [on placement in English

immersion or mainstream English language classrooms] may be waived with the prior written informed consent, to be provided **annually**, of the child's parents or guardians."

It seems clear, then, that since waivers must be requested annually, and the requests must follow the 30-day assessment period, "**that** school year" means the same year in which a waiver is requested. Therefore, if the request for a waiver is renewed in succeeding year(s), so must the placement in an English language classroom be repeated. Significantly, this legal opinion does not overlook the link in the proposition between the 30-day period and the issuance of waivers but, leaning on the (minimal) ambiguity of the word "that," it chooses a loose interpretation.

The opinion also speaks of the undesirable "interruption" of a bilingual education program each school year. But reassessing the English proficiency of English learners at the beginning of each school year does not constitute an interruption but is in fact a necessary step to assure that children are not held back when they might be ready to enter a "sheltered English immersion" class or leave the latter for a mainstream English classroom. This is recognized in the 1998 CSBA Policy statement quoted above. And the legal document discussed here, in spite of its seemingly definitive opinions, states that the language of Proposition 227 is "ambiguous and thus open to an alternative interpretation" and ends by referring the correspondent to her own district's legal counsel.

Subsequent statements by the CSBA and the State Board of Education have been no more enlightening. A policy update of March 2002 by the SBE repeats that "there is no need to repeat the 30-day special needs assessment in subsequent years." This statement adds another element of confusion, for the 30-day period was not designed to assess "special needs" but rather English proficiency. The "SBE Highlights" of May 2002 again refers to the previously quoted legal opinion of 1999, stating that the 30-day assessment period need not be repeated, but states in an adjacent paragraph:

*Finally, The State Board's regulations do not force school officials to change current practices with regard to how they implement the 30-day special needs assessment in a multi-year alternative program of instruction, pursuant to Education Code section 311(c). The State Board has decided to let the language of the statute speak for itself.*

As shown above, the 1999 legal opinion's reading of the proposition is erroneous but has, nevertheless, been repeated in subsequent documents of the SBE and the CSBA. In addition, it is clear from an examination of the implementation of Proposition 227 in a number of school districts that they approach the problem in many different ways. If "the State Board's

regulations do not force school officials to change current practices” regardless of what those practices might be, the Board in effect sanctions whatever procedures are being followed. Almost. Refraining, like the author of the legal opinion, from committing itself to a definitive interpretation that might provide clear guidance to school districts and that might be uniformly applied, “The State Board has decided to let the language of the statute speak for itself.” Those sections of the Education Code that deal with the implementation of Proposition 227 also repeat verbatim the relevant paragraphs of the proposition.

## **Waivers**

The same confusion that envelops the question of the 30-day assessment period characterizes the issuance of waivers. Aside from the reluctance of some districts to grant waivers only after a 30-day assessment period each year, definitions of a child’s “special needs,” the most frequent reason used to request them, vary greatly. In addition, and this is where much of the contradiction surrounding waivers lies, it is unclear in the SBE documents who has the final say on which program is best suited to meet a child’s needs. In the many contradictory statements about this matter, and in spite of often reiterated assurances that the intent is to comply with the law, concern with the implementation of Proposition 227 often becomes secondary to the desire or perceived need to satisfy the parent.

The “CSBA Sample Board Policy” of 1998 and SBE documents both insist on the “ambiguity” and “complexity” of the language of Proposition 227 (however clear its statements might be) and purport to offer interpretations, yet consistently assign responsibility for a final interpretation to the local districts. The 1998 Policy states:

*Proposition 227 (Education Code 300-340), which was enacted in June 1998, requires that English language learners be educated through a program of “sheltered English immersion” with the goal that students learn English as rapidly and effectively as possible ... (SBE) have determined that local Governing Boards have broad discretion and flexibility in interpretation of the initiative.*

The relinquishing of final responsibility to local authorities is repeated numerous times in this and subsequent documents, which rely on this original interpretation and on the 1999 legal opinion. Concern with possible legal action is also evident from the start. The beginning of the policy states, “As it is anticipated that this terminology will be the subject of legal debates, districts should proceed cautiously when implementing this new law.” And a little further it continues:

*The SBE has declared that one of the primary purposes of Proposition 227 is to allow parents/guardians the opportunity to choose the program that is best suited to their child. Education Code 320 grants parents/guardians legal standing to sue Board members, teachers or administrators **only** if their child has been ‘denied the option of an English language curriculum.’ Therefore, districts should ensure that requests from parents/guardians to place their child in an ‘English language mainstream classroom’ are granted immediately.*

And so the problem of waivers also becomes connected to the fear of legal action.

But this directive also means that a parent can opt **into** an English-speaking classroom even if the educational personnel deem the child not to be ready. It should be noted, however, that the first sentence of the above declaration is inaccurate. As is apparent from the statements about waivers further on, the choice of programs by parents is **not** a purpose of the proposition, although parental participation is desired. The above statement seems to recognize implicitly that the only purpose of the proposition is to ensure that children whose native language is not English will be helped to learn English as fluently and as quickly as possible. The last sentence of the above quotation is also noteworthy because it declares, perhaps inadvertently, that a parent’s request is urgent and above question when she wants to opt **into** not **out of** an English-language classroom for her child. And according to CSBA/SBE interpretations of the proposition, denial of such a request is also the **only** grounds for legal action.

But what happens when parents claim a “special need” for their children or wish that they continue speaking Spanish? Waivers have become contentious because they are requested, and granted, to place children in bilingual or alternative (Spanish-speaking) programs. The role of parents is less clear when they want to opt **out of** English and **into** Spanish-speaking classrooms. It is less clear because both Boards’ (CSBA/SBE) positions are again contradictory. On the one hand, their statements emphasize parental choice, as above, and give repeated assurances that in the determination of “special needs” a parent’s opinion will be heavily weighted. On the other hand, they authorize districts to overrule parents, and leave to them the responsibility of denying waivers when necessary and drawing up criteria for doing so:

*Education Code 311(c) requires local Boards to establish and review guidelines for the granting/denying of “special needs” waivers by the Superintendent ... .*



Also,

*Pursuant to 5 CCR 11303, the district is required to grant all waiver requests, unless the principal and educational staff have determined that an alternative program offered at the school would not be better suited for the overall educational development of the student. Therefore, the burden is on the district staff to show why a waiver request should not be granted.*

Once the district has established the guidelines, the principal and educational staff should be able to determine whether the reason for a transfer request to bilingual education is valid or not. Indeed, what would be the purpose of an assessment period (the 30 days), tests and personal interviews if the parent could simply make a decision which would be automatically followed? It is certainly reasonable that professional educators rather than parents evaluate the level of English proficiency of the student and any possible effect a “special need” might have on academic progress, and then make the determination on placement. But in practice, to avoid conflict with parents and sometimes to serve self-interest, not only have waiver requests been automatically granted but parents have been often encouraged, even persuaded, to have their children placed and kept in bilingual education programs.

## **Goals**

The CSBA’s 1998 policy suggests that districts adopt and follow a basic “theory” on which instruction to English language learners is to be based:

*The district’s program shall be based on sound instructional theory and shall be adequately supported so that English language learners can achieve results at the same academic level as their English-proficient peers.*

As the preceding quotation and the following one indicate, however, the effort to deal with academic performance (that is progress in subjects other than English) is linked from the beginning to simultaneous progress in English:

*To ensure that the district is using sound methods that effectively serve the needs of English language learners, the Superintendent or designee shall annually examine program results, including reports of the students’ academic achievement and their progress towards proficiency in English ... .*

From the perspective of learning English “as quickly and as effectively as possible,” an oft-repeated phrase from the proposition, this attempt is

unrealistic and counterproductive since it slows down progress in the new language. Furthermore, should children fall somewhat behind temporarily in their academic studies by concentrating on English, they could soon catch up with their English-speaking peers. Along with mastering the structure (grammar) of a language, fluency depends mainly on a steadily expanding vocabulary. And nothing increases one's vocabulary as much or as fast as studying a variety of subjects in the new language. While this may involve a measure of frustration, or at least some discomfort for the learner at the beginning, it is soon replaced by a growing level of confidence. The State's "Coordinated Compliance Review Training Guide — 2003-2004" recognizes this reality when it decrees that "The district may choose to concentrate first on teaching English so long as the district subsequently brings students to grade level in all other areas of the curriculum within a reasonable amount of time." It also seems to recognize the importance of emphasis on English and compliance with the law when it states, "EL students with less-than-reasonable fluency in English have been placed in structured English immersion for a period not normally intended to exceed one year. If they have not achieved a reasonable level of English proficiency at the end of the transitional period, they may be reenrolled unless the parents or guardians object."

An additional benefit claimed by the proponents of bilingual education programs is the opportunity they offer to English speakers who wish to become fluent in Spanish. Such classes are designated as "dual immersion" or "two-way" (2Way) programs. In these classes, at least at the early stages, the efforts of English speakers to learn Spanish take precedence over the efforts of Spanish speakers to learn English because instruction is overwhelmingly in Spanish. For the Spanish speakers the proportion of languages should be the reverse. One might also wonder why immersion is deemed to work for native English speakers but not for Spanish speakers. In the long run, however, the English speakers also lose the benefits of an immersion method since they are, in effect, exposed to it "in reverse." Instead of using the new language more and more as they start to become proficient, they practice it less and less as the ratio of instruction in English goes up. Moreover, these students should eventually be able to reach their goal of learning Spanish in regular foreign language classes offered in the district. But whether they have that opportunity or not, their needs should not take precedence over the need of Spanish-speaking children to learn English. The stated goal of Proposition 227, which keeps getting lost from sight, is **not** bilingualism but rapidly achieved English proficiency.

Nor should the psychological impact of current practices on Spanish-speaking children be underestimated. The most likely message they are receiving in bilingual and 2Way classes is that English fluency is less important than Spanish proficiency which might well dampen their

motivation to work at perfecting their English. Motivation is probably the most important element in language acquisition.

## **ANALYSIS — AND NOW**

No doubt hampered, like many other districts, by a lack of clear directions from the state and, at the same time, targeted by steady and intense political pressure, the SAUSD has been lax, not to say reluctant, in its implementation of Proposition 227. The political pressure was exerted not only on the administration of the school district, but also on those members of the Board of Education who favored compliance with the law by those who resisted it, and on the affected parents themselves. Advocates of bilingual education used persuasion to encourage parents enrolling their Spanish-speaking children in school to opt for bilingual education whether they had a valid reason to do so or not. Several thousand such parents signed waiver forms, perhaps without understanding that they were undermining their children's chances of rapidly learning English and, thereby, their future success in school and later. The solicitation of waivers took place at parent meetings at school sites before the start of kindergarten and individually, when bilingual advocates among teachers and principals met and advised parents. These members of the educational staff could be confident enough of obtaining the requisite number of waivers that classes could be designated as bilingual and books for them could be ordered in Spanish, long before the beginning of each school term.

The district for its part, having persuaded the parents to request waivers, accepted them all, including those which, even by its own generous standards, offered no acceptable reason for the request. These procedures constituted widespread abuse of the waiver process. A number of waivers, for example, simply said (in Spanish) that the parent would "prefer" or "like" her child to speak Spanish. One claimed that the child "gets confused" when working in English. Some were "unable to help with homework" in English. None of these reasons needed to stand in the child's way to learning English. Parents' preferences do not describe a child's "needs." English-speaking students also get confused and English-speaking parents are often unable to help with homework.

The above and other dubious justifications (the child has poor self-esteem, gets frustrated, is shy, etc.) were presented to a DAC/DELAC (District Advisory Committee and District English Learner Advisory Committee) meeting as recently as July 21, 2003, as acceptable reasons to request waivers. And since acceptance of all, or nearly all, waivers was predetermined, not surprisingly, the district also concluded that the 30-day English immersion period was not required each year before issuing

new waivers. In fact, evidence suggests that new waivers themselves were not required **annually**, one provision of the proposition not in dispute, but, rather, waivers once signed were continued from year to year. The forms themselves were designed in such a way that space was not provided for more than a five- or six-word explanation of any problem the child might have. Nor did they leave any space for the superintendent to indicate that he had reviewed the waiver requests as required by Proposition 227.

In the spring of 2003, perhaps as a result of the recall election as well as a partially negative evaluation from the Comité (an SBE review process), the administration and school board in Santa Ana decided to revisit the issue of implementing Proposition 227 and to review its most contentious provisions. According to the minutes of the May 27 board meeting, they consulted the OCDE legal counsel who advised that a legal opinion issued by the “Attorney General” [sic] states that once a waiver is “in place” the 30-day assessment period need not be repeated. The Director of Bilingual Education, however, referred to the California English Language Development Exam which must be taken annually and the results of which should determine “student program placement.” Unless a waiver is requested which would put the student in a bilingual program. This appears to be an attempt to comply with the new federal “No Child Left Behind” law, to which reference is made, and simultaneously to skirt Proposition 227 requirements.

Early in the summer, the SAUSD hired a law firm to help it better define the waiver process, to clarify criteria and streamline procedures. Although the reforms introduced as a result of the firm’s advice are severely limited, its counsel assured the district that the new procedures were designed to “enhance each student’s ability to learn English ... and also to protect the District and the School Board against costly and unnecessary litigation.” The new procedures for kindergartners seem to come closer to compliance with Proposition 227 but leave out continuing EL students, the vast majority.

Children entering kindergarten will spend 30 days in SEI, and waivers will be approved or denied after that period. If their parents desire waivers subsequently, the complete process is to be repeated each year. But continuing EL students will not have to repeat the 30-day assessment period if they had done it once, nor will their parents have to submit new waivers each year although the ones on file are to be “reviewed.” New, improved, waiver forms have been created but if the kind of compliance required of children now in kindergarten were to continue only as they move up the grades, complete compliance with Proposition 227 would still take several years. As of August 2003, “grandfathered” waivers represented more than 6,000 students in bilingual education. By the time

the fall 2003 term began, the number of requested and approved waivers is said to have decreased by about 50 percent. But even if that is the case, the Santa Ana district is still left with more than 3,000 students on waivers.

Further and more serious indications that the needed, extensive reform of the waiver program and the correction of the overemphasis on bilingual education might still be in the distant future appear in the SAUSD's "Master Plan For English Learners," dated July 2003. The Transitional Bilingual Education Program and the 2Way Language Immersion Program are both troublesome in their concept and the length of time they require to help children reach fluency in English. Both depend on waivers.

### **The Bilingual Education Program**

Children who begin bilingual education in kindergarten are expected to stay in it for at least three years. A "formal transitional English reading program" is not begun until the children reach a third grade reading and writing level in Spanish. In fact, "enhancing" their language and writing skills in their native language while slowly learning English is much touted in district documents. Some reading and writing skills, if children already have them, might transfer to the new language. However, improving the students' Spanish while prolonging the process of their acquiring English is neither essential nor desirable. **Rapid** English acquisition is the goal. It is also doubtful that reading and writing skills in Spanish, which is a phonetic language, can be of much help in acquiring those skills in English which is not. While, theoretically, the parents of children in this program would have to request a new waiver each year, the clear assumption is that they will be needed for at least four years. The need for them would not necessarily be related to any "special need" but would be closely related to inadequate mastery of English.

The principle underlying such a program is continuity; the belief that once started, it should not be interrupted. But the notion that a bilingual program should not be "interrupted" also works to the detriment of children. If, as claimed, the children are engaged in learning the same core curriculum as their mainstream counterparts, their academic work is not interrupted by studying more and more of it in English. Moreover, the preordained need for and granting of waivers for several years is inconsistent with the proposition's requirement and the district's fresh promise to require new waivers each year. The proposition's requirement must be predicated on the assumption that the condition justifying the waiver is not permanent; that special needs can change. Finally, the purpose of Proposition 227 would seem to be precisely to interrupt, or more exactly to phase out and stop, instruction in the foreign language as quickly as possible. Holding the children back to preserve a program

should certainly not be the goal. “Interrupting the program,” then, can only mean interrupting it for those who have either a political or financial stake or an educational vested interest in its continued existence.

### **The 2Way Language Immersion Program**

The 2Way Language Immersion Program is even more blatant in its contravention of the district’s stated effort to bring students to fluency in English rapidly, and to discourage the misuse and abuse of waivers. This program is designed for both English and Spanish speakers with the objective of making both groups bilingual. The very goal of the program contravenes that of Proposition 227 which is exclusively the attainment of English proficiency. As noted earlier, both groups are at a disadvantage in this effort because of the structure and methodology of the program. Instead of using their newly acquired language more as they learn more of it, the English speakers use it less and less with time. The Spanish speakers, on the other hand, are slowed down and held back an unconscionable amount of time. Their acquisition of English is impeded year after year in favor of cultivating knowledge of their native language.

A draft of the district’s most recent Master Plan states that the district does not recommend that students enter this program after the first grade, although exceptions can be made for students from a “previous bilingual program setting.” It further asks of parents “a strong commitment to keep their sons/daughters in this program for at least 5-6 years.” If the provisions of Proposition 227 and the new resolution of the district were to be adhered to, each of these years, as in the bilingual education program, would also require a new waiver. But clearly, granting these waivers must be guaranteed.

Even more troublesome than the waivers themselves are the problems of numerical balance between English- and Spanish-speaking students and the percentage of English- to Spanish-language instruction respectively, at various levels. According to the Master Plan, the balance should not drop below 1/3 native-English speakers. A higher percentage would be even more desirable. It is difficult to see how such a balance could ever be achieved in the majority of classes in schools where close to 90 percent or more of the student body is comprised of Spanish speakers. And still more troubling, instruction in English, which increases by increments, begins with an 85/15 ratio of Spanish to English instruction and rises to 50/50 by fifth grade. This means that at the end of five or six years in this program, Spanish speakers are still being taught in English only 50 percent of the time.

Perhaps the most elementary axiom in education is that children (like adults) learn what they are taught. And what they practice. And learn best

what they practice most. It should not be the goal of classes for Spanish-speaking students to improve their native language skills. The notion that they will be able to transfer knowledge of content material in Spanish into English may be true, but such a step should not be necessary. It is an extra step in learning. Nor is there any evidence that, as claimed by the proponents of bilingual education, slowing down the learning of English this way improves academic performance later. It is apparent, on the contrary, that Santa Ana Unified and districts like it, where bilingual education is the most prevalent, have the greatest number of “low performing” schools.

First-hand evidence that these procedures work to the detriment of student progress in English was provided by a brief visit to several schools in November 2003. Some students face unnecessary obstacles in their efforts to become proficient in English. For example, one student who spoke fluent English was found in a bilingual kindergarten class and other children, less fluent but English speakers, learning to read Spanish. Another bilingual kindergarten class was about to switch from an English-language to a Spanish-language math book just because the Spanish version had finally arrived. But they were doing beautifully in English! When teachers in three bilingual classes were asked if they thought that some individual students just encountered who spoke English at various levels belonged in those rather than English-language classes, they said no. According to the assistant principal of one school, bilingual education had been phased out there and was replaced by the 2Way program. Half of its student population is now in the 2Way program, on waivers. Most children there do not reach the mainstream English program until the fifth grade or later. Not even the most charitable view could consider this “rapid” progress.

### **Pedagogy**

The instructional approaches of the 2Way program purport to be based by the Master Plan on the “pedagogical principals [sic] underlying bilingual and foreign language teaching and methodology.” If so, it is very old and outdated methodology. One of the most extraordinary aspects of bilingual education is that it grew independently of developments in foreign language teaching. It acquired a life of its own, separate from that field, even though English is, after all, a foreign language to those now in bilingual education.

From the early 20<sup>th</sup> century, theories of fast and effective language acquisition have tended toward methodologies based on total immersion in the target language from the beginning. The theory of total immersion received new impetus from the Army’s success during and immediately following World War II in rapidly expanding the number of personnel

proficient in a second language. Great strides in the same direction were made through the second half of the century when universities and schools began to adopt the “army method” under different designations. While other approaches (the “grammar method,” the “reading method,” etc.) did not disappear, by the 1980s and ’90s it was recognized that the “direct method” (immersion) in its various forms worked the best for learning, first the oral language (speaking and understanding the spoken word), then reading and writing, well and fast. It should be obvious that people who already speak one language become bilingual by learning another. Children who speak Spanish become bilingual by learning English.

Bilingual education as it is now practiced in California is very different from the programs described above. It is in reality instruction in the foreign language, with a slow, graduated, introduction of English. Children are routinely kept in bilingual programs for several years before they are deemed to be ready for mainstream English classes: five or six years to reach a level which, using the most advanced methodology, might be accomplished in five or six months. Much has been written for more than two decades on the effectiveness of bilingual education. However, there is a serious shortcoming in all this academic research. It has been done almost exclusively by professionals in the field of bilingual education who have limited their work to and measure the progress only of children in those programs. They do not study or make comparisons between students in bilingual education and those learning foreign languages in academic settings in their own countries. In many schools, here and abroad, where foreign languages are part of the curriculum, students can learn a language in two to four years with only a four- to five-hour exposure to the subject each week.

One recent article, whose thesis is that children need many years to learn English (and should therefore remain in bilingual programs), specifically refers to Proposition 227’s call for a one-year immersion program and deems it to be “wildly unrealistic.” In reality, it is only unrealistic in a bilingual setting. It is not unreasonable to expect most children to be able to acquire a working knowledge of English in a year in an immersion program. Their English, at that point, may be imperfect and limited, but it is use of the language to study the core curriculum that will enable them to master it. Pedagogy, however, is less important here than social and political concerns. This is also true of the general “Pedagogical Principles” listed in the Master Plan as the basis of all the programs listed. All this could be explained (away) by the source from which bilingual education sprang: legislative mandates designed to help children whose native language was not English. But as currently administered, it does not help the children and does not even try to reach out to all such children.



Congress and the States, as well as many boards of education, had intended to help all non-English-speaking children. Budget constraints, ethnic groupings and other considerations have made this impossible within the confines of bilingual education programs that are almost entirely Spanish. Twenty-one percent or almost a fourth of LEP students in California receive no special services at all despite the existence of laws mandating such help. Yet we must assume that immigrant children from other than Spanish-speaking backgrounds also manage to learn English. The intent and goal governing all these programs, giving equal access to education to all, is not being met. It would benefit both Spanish speakers and speakers of other languages to curtail the scope of current bilingual programs in Spanish and replace them with less extensive but more inclusive efforts to help all children. Available resources could be redistributed to establish more English-immersion classes that would mix children of different language backgrounds (as recommended by Proposition 227) and provide tutoring, rather than formal classes, to smaller groups of children than are needed to justify these classes.

In at least one district neighboring Santa Ana, there are no bilingual classes or programs. Yet the percentage of children whose native language is not English is about the same. And among them, the percentage of those who speak Spanish approximately corresponds to the percentage in Santa Ana. There are “newcomer” classes which follow the methods of “sheltered” or “structured” English. At the end of one year in this program, children enter mainstream programs within which they continue to receive additional support in English, if needed. Parents, who belong to the same school-related organizations as the ones in Santa Ana, are brought to understand that their children are following a course which is in their best interest, and they are satisfied.

## **CONCLUSION**

In view of the foregoing, it is distressing to read in the Master Plan that instead of phasing out bilingual programs, more new ones are planned. Specifically, two secondary bilingual programs for two categories of students are to begin in the 2004-2005 school year. There is no doubt that many of the projected services in these programs are needed but, as in the programs for younger children, these programs fall short of a sufficient emphasis on acquiring English fluency. The program for “Under Schooled English Learners,” for example, will offer “primary-language instruction in Spanish language arts.” These students need to be brought to literacy in English not in Spanish. The rationale of an “easy transfer into a second language after developing strong skills in their primary language” is even less valid for adolescents than it is for younger children. Long periods of time are lost by not developing the needed skills in

English, but teaching students their native language instead. Since the SAUSD is not mandated to assure its students' fluency in their native language, it might rethink these plans and opt instead for a more efficient and much more rapid method of English instruction (immersion), even if that would require reduced exposure to a core curriculum for a brief period (one year). As was pointed out above, these priorities have been approved by the SBE review process, the Comité. And the experience of the neighboring district just cited shows that both parents and instructional staff can be steered away from bilingualism and toward the mainstream. It is a matter of commitment and leadership.

When faced with conflicting interpretations of the details of the law, the administrators and especially the members of the Board of Education of the Santa Ana Unified School District, need to keep sight of the spirit and intent of Proposition 227, particularly its last provision, which encompasses the rest, and which states:

*ARTICLE 9. Interpretation*

*340. Under circumstances in which portions of this statute are subject to conflicting interpretations, Section 300 shall be assumed to contain the governing intent of the statute.*

Section 300, in turn, after listing the many reasons Proposition 227 was deemed to be necessary by its authors and the voters of California, concludes:

*(f) THEREFORE it is resolved that: all children in California public schools shall be taught English as rapidly and effectively as possible.*

**FINDINGS**

Under *California Penal Code* §933 and §933.05, responses are required to all findings. The 2003-2004 Orange County Grand Jury has arrived at the following findings:

1. The SAUSD has received no clear guidance for the implementation of Proposition 227.
2. The SAUSD has fostered an atmosphere that has encouraged resistance to implementation of Proposition 227 by the Board of Education, administrators, teachers and other staff and parents.
3. Parents of SAUSD school children were led into believing that lengthy bilingual education programs rather than rapid English acquisition were in their children's best interests.

4. The SAUSD has instituted elaborate and lengthy programs in bilingual education that impede student progress in the acquisition of English proficiency by devoting too much time to the teaching of Spanish and core curriculum in Spanish.
5. In the bilingual education programs in the SAUSD, the emphasis on instruction of and in the Spanish language is so extensive that it is, in effect, schooling in a foreign language, parallel to mainstream schools, in which English is just one of many subjects taught.
6. The SAUSD has used the waiver program inappropriately, unnecessarily placing many children in bilingual education rather than English immersion and/or mainstream classes in English.
7. Plans to reform the administration of the waiver process conflict with existing and projected bilingual and 2Way programs, which continue for several years.

A response to each finding is required from the Superintendent of the Santa Ana Unified School District and the Santa Ana Board of Education.

## **RECOMMENDATIONS**

In accordance with *California Penal Code* §933 and §933.05, each recommendation requires a response from the government entity to which it is addressed. These responses are to be submitted to the Presiding Judge of the Superior Court. Based upon the findings, the 2003-2004 Orange County Grand Jury recommends that the Santa Ana Unified School District and its Board of Education:

1. Rely on Education Code 305 and its own close reading of the law in implementing the mandates of Proposition 227. (Finding 1)
2. Commit itself to complying with the mandates of Proposition 227 and educate its staff and parents both in the requirements of the law and the benefits of English proficiency for their children. (Finding 2)
3. Use contact with parents on an individual level, at their committee meetings and at community tutoring sessions to emphasize the advantages of early and rapid English acquisition. (Finding 3)
4. Discontinue its numerous classes in “Spanish language arts” in bilingual and 2Way programs and accelerate the ratio of the use of

English to Spanish in the teaching of core curriculum subjects.  
(Findings 4 and 5)

5. Reduce the length and curtail the scope of existing and projected bilingual education and 2Way programs and issue waivers for children to stay in these programs only for the most compelling reasons.  
(Findings 6 and 7)
6. Use the resources recovered from the curtailment of bilingual education and 2Way programs in Spanish to establish more English immersion classes in which children from different language backgrounds would be mixed. (Findings 4 and 6)

A response to each recommendation is required from the Superintendent of the Santa Ana Unified School District and the Santa Ana Board of Education.