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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 JEREMIAH GLASSMAN, D.C. Bar No. 172395  
2 EMILY H. McCARTHY, D.C. Bar No. 463447  
3 United States Department of Justice  
4 Civil Rights Division  
5 Educational Opportunities Section  
6 950 Pennsylvania Avenue, N.W.  
7 Washington D.C. 20530  
8 Telephone: (202) 514-4092  
9 Facsimile: (202) 514-8337  
10 E-Mail: jeremiah.glassman@usdoj.gov  
11 emily.mccarthy@usdoj.gov

12 Attorneys for Plaintiff-Intervenor  
13 UNITED STATES OF AMERICA

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

16 KINNEY KINMON LAU, et al.,  
17 Plaintiffs,  
18 UNITED STATES OF AMERICA,  
19 Plaintiff-Intervenor,

No. C-70-627 LHB  
RESPONSE OF THE UNITED STATES  
TO THE COURT'S ORDER OF  
AUGUST 24, 2006  
Hearing Date: N/A  
Time: N/A  
Court: Hon. Vaughn R. Walker

20 vs.

21 DR. EUGENE HOPP, et al.,  
22 Defendants.

23 On August 24, 2006, the Court issued an order requiring the parties in the above-styled  
24 case to show cause why the Court should not relieve the San Francisco Unified School District  
25 (SFUSD) of any responsibility for reporting under the extant Consent Decree of October 22,  
26 1976. See Consent Decree of Oct. 22, 1976 (Attach. 1). Further, if any party believes that the  
27 Court's continued oversight is necessary, the Court directed such party to explain the nature of  
the oversight and to estimate for how long such oversight will be necessary. In issuing the order,

United States' Response to the Court's Order of August 24, 2006, C.A. No. C-70-627 LHB

169-11E-2

1 the Court noted that the SFUSD has continued to file the annual reports long after the retirement  
2 of the judicial officer assigned to the case, and that the clerk's office has continued to docket the  
3 filings with those of visiting and retired judges. Thus, no judicial officer is attending to the  
4 Consent Decree compliance issues that the reports are intended in part to address. Finally, the  
5 Court stated that the status quo suggests that the Court may no longer be serving any useful role.

6 For the reasons set forth below, the United States believes that judicial oversight and  
7 reporting by the SFUSD are necessary and should continue until the SFUSD can demonstrate full  
8 compliance with an updated and effective plan for serving its English Learner (EL) students for a  
9 reasonable period of time.

#### 10 **I. Background of the Case**

11 The United States Supreme Court decided this lawsuit by holding that the SFUSD had  
12 violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing  
13 regulations by failing to provide special programs designed to rectify the English language  
14 deficiencies of students who do not speak or understand English, or are of limited English-  
15 speaking ability, and by failing to provide these students with equal access to the instructional  
16 program. Lau v. Nichols, 414 U.S. 563 (1974). The Supreme Court remanded the case for the  
17 fashioning of appropriate relief and directed the Board of Education for the SFUSD to apply its  
18 expertise and rectify the situation. Indeed, as this case and subsequent federal law make clear,  
19 school districts may not deny EL students equal educational opportunity by failing to take  
20 appropriate action to overcome their language barriers that impede their equal participation in the  
21 instructional program. See Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1703(f).

22 Subsequent to the remand, on October 22, 1976, the parties entered into a Consent Decree  
23 that incorporated a Master Plan for Bilingual-Bicultural Education for the Chinese, Filipino and  
24 Spanish language EL students. Order of Oct. 22, 1976, at 2 ¶ 1 (Attach. 1). The Consent Decree  
25 required the provision of other special programs and English as a Second Language (ESL) for EL  
26 students of other language groups, as well as the provision of bilingual instruction, whenever

1 feasible. Id. The Court retained jurisdiction and the Consent Decree called for annual reporting  
2 to the Court by the SFUSD regarding its programs for EL students. Id. at 3-4 ¶ 3(a-k), 6 ¶ 6  
3 (Attach. 1). To facilitate monitoring, the Consent Decree directed the SFUSD to establish a  
4 Community Council and to enlist the assistance of the Community Council in filing the annual  
5 reports. Id. at 5 ¶ 4 (Attach. 1) The Community Council had the right to file a minority report,  
6 and the parties to the Consent Decree retained the right to file objections regarding the Plan's  
7 implementation. Id. at 5 ¶¶ 4(a), 5 (Attach. 1)

8 **II. Changes Since the Master Plan's Adoption and Recent Activity in the Case**

9 As required by the Consent Decree, the SFUSD has filed annual reports that generally  
10 provide a positive overview of the programs for its EL students. These reports originally served  
11 to permit an evaluation of the SFUSD's compliance with the Consent Decree and Master Plan.  
12 Although the Consent Decree mandated bilingual programs for most EL students, id. at 2 ¶ 1,  
13 subsequent changes in California law have substantially reduced the bilingual programs in the  
14 SFUSD and increased the number of other programs for EL students. See Cal. Educ. Code § 300  
15 et. seq. (replacing bilingual education programs with immersion programs, in which students are  
16 required to learn English and other subjects with a teacher who speaks primarily in English). The  
17 SFUSD currently offers six types of EL programs: (1) newcomer programs, (2) two-way  
18 immersion, (3) maintenance bilingual, (4) intensive English, (5) transitional bilingual, and (6)  
19 total immersion in English and Cantonese with Mandarin enrichment. SFUSD's 2004-05 Lau  
20 Report at 7-10 (describing programs). These programs have four basic elements: (1) English  
21 language development (ELD), (2) native language content courses, (3) specially designed  
22 academic instruction in English (SDAIE), and (4) cross-cultural understanding. Id. at 7. As a  
23 result, the Consent Decree no longer accurately describes the District's EL programs, and the  
24 annual reports are no longer aligned to the requirements in the Consent Decree or the Master  
25 Plan.

26 While the annual reports have provided useful information, they offer an incomplete

1 picture of how the different EL programs are being implemented at the school level. The reports  
2 describe how each program is supposed to work and identify the schools that provide each  
3 program. Id. at 7-10. Issues regarding the implementation of the programs at individual schools,  
4 however, were not discernible from the reports and did not become clear until the Community  
5 Council (now called the Bilingual Community Council or the BCC) began investigating the  
6 SFUSD's provision of services to EL students. In the spring and fall of 2005, the BCC visited  
7 approximately 50 schools in the SFUSD. During these visits, the BCC found many problems,  
8 including but not limited to the following: (1) some schools were not providing all EL students  
9 with the daily minimum of 30 minutes of ELD instruction; (2) staff responsible for teaching ELD  
10 classes were not adequately trained; (3) the articulation of the ELD standards across grade levels  
11 was insufficient; (4) bilingual programs had inadequate instruction in the native language; and  
12 (5) parents were not sufficiently informed of the services available for EL students.

13 On October 5, 2006, the BCC shared its observations and recommendations with the  
14 SFUSD. Since that time, the BCC has informed us that it is working with the SFUSD's  
15 Department of Multilingual Programs to further explore these concerns. On November 6, 2006,  
16 counsel for the United States met with the BCC to hear its concerns. The BCC informed the  
17 United States that the SFUSD had not sought the aid of the BCC in filing the annual court  
18 reports, as the Consent Decree requires. See Order of Oct. 22, 1976, at 5 ¶ 4(a) (Attach. 1).

19 Based on the information provided by the BCC and to respond to the Court's inquiry  
20 regarding whether the issues that the case intended to address have been resolved fully, the  
21 United States visited eight schools in 2007 with a retained consultant, Dr. Julie Maxwell-Jolly,  
22 who has expertise regarding EL programs. These schools serve grades K-12 and offer four of the  
23 six EL programs in the SFUSD. See Decl. of Julie Maxwell-Jolly at 1-2 ¶ 2 (Attach. 2).  
24 Members of the BCC, the SFUSD Director of Multilingual Programs, and counsel for the parties  
25 also participated in the visits of the schools. The United States' consultant identified a number of  
26 concerns about the SFUSD's programs for EL students. Those concerns are set forth in more

1 detail in her declaration. See id. The concerns identified by the BCC during these visits and  
2 those conducted independently in 2005 are set forth in the declaration of May Huie, which  
3 accompanies the response of the Lau plaintiffs to this Court's order to show cause.

4 A review of both declarations makes clear that the SFUSD's implementation of its EL  
5 programs is inadequate in several respects and that corrective action and continued oversight are  
6 needed before this case can be brought to a just closure. For example, Dr. Maxwell-Jolly  
7 identifies the following concerns in her declaration. Many EL students are in mainstream classes  
8 without the appropriately trained teachers or materials needed to make the curriculum accessible.  
9 Decl. of Julie Maxwell-Jolly at 2-3 ¶¶ 5-6, 5 ¶¶ 10-11, 6 ¶¶ 13-14. (Attach 2). This was the very  
10 problem that provided the basis for relief in this case. The Chinese programs lack adequate  
11 materials in the native language, id. at 4 ¶ 9, even though the Consent Decree has mandated  
12 bilingual programs for Chinese speakers since 1976. See Order of Oct. 22, 1976, at 2 ¶ 1  
13 (Attach. 1). Many EL students are not receiving daily or consistent ELD instruction. Decl. of  
14 Julie Maxwell-Jolly at 2-3 ¶ 5 (Attach. 2). Communications with parents at certain schools is  
15 limited even though the annual reports describe a Translation Department that is available to help  
16 schools communicate with parents, because translations required too long of a lead time for  
17 written translations (e.g., two to four weeks). Id. at 8 ¶ 18. The District and its schools are not  
18 adequately monitoring their EL programs to determine if they are enabling EL students to  
19 transition successfully into regular education classes within a reasonable amount of time. Id. at 7  
20 ¶¶ 16-17. Dr. Maxwell-Jolly also raised concerns about EL students' access to special education  
21 services. Id. at 8 ¶ 19. The BCC echoes these concerns in its declaration.

22 **III. The Parties Need Additional Time to Complete their Review of the EL Programs**  
23 **and to Develop a Current and Effective Plan to Replace the Outdated Master Plan**

24 The findings of both the United States' consultant and the BCC demonstrate that  
25 continued oversight of the SFUSD's EL programs is needed. The BCC has initiated a  
26 constructive process for evaluating these programs and is well poised to assist the SFUSD with

1 its annual reports, as the Consent Decree requires. Currently, all parties are working  
2 cooperatively to identify problems in the EL programs that require rectification. The parties  
3 agree that on-site review of more schools is needed to ascertain the range and depth of the  
4 problems discovered thus far. The United States therefore intends to continue on-site reviews of  
5 the schools by the United States' consultant through the remainder of the 2006-07 school year.

6 This comprehensive review would enable the parties to replace the outdated Master Plan  
7 with a plan that accurately reflects the programs presently available in the SFUSD and that  
8 proscribes corrective action where appropriate. The new plan would then serve as the basis for  
9 evaluating the SFUSD's compliance with its legal obligations toward EL students, the very  
10 purpose of this case. Future reporting obligations would be tailored to the requirements of the  
11 new plan and would provide more qualitative information about the EL programs at individual  
12 schools. The United States also recommends that the reports include an evaluation of the  
13 effectiveness of the different EL programs at the school and district levels so that the Court and  
14 the parties could assess whether the SFUSD was meeting its legal obligations. In addition to  
15 maintaining a reporting requirement, the United States also believes that regular on-site  
16 monitoring of EL programs is necessary, including internal monitoring by the SFUSD, to ensure  
17 that the new plan's requirements are implemented properly at the school level. On-site  
18 monitoring also would enable the SFUSD to resolve problems in a more timely manner. These  
19 proposed modifications to the 1976 Consent Decree could be established in a new decree.

#### 20 **IV. Judicial Oversight Remains Necessary**

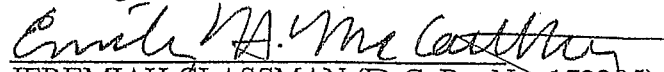
21 While the parties anticipate working cooperatively, judicial oversight remains necessary  
22 to provide a means of enforcing the SFUSD's compliance with its federal obligations toward EL  
23 students. The SFUSD's reporting obligations also need to continue but should be revised to  
24 permit an assessment of the SFUSD's compliance with an updated and effective plan for serving  
25 EL students. The United States therefore urges this Court to assign this case to an active judge  
26 who would receive the revised annual reports regarding the SFUSD's implementation of the new

1 plan and any objections to the reports filed by the BCC, the private plaintiffs, and the United  
2 States. The United States further recommends that judicial oversight continue until the SFUSD  
3 has implemented the new plan fully and in good faith for a period of three years.

4 Respectfully submitted,

5 KEVIN V. RYAN  
6 United States Attorney  
Northern District of California

WAN J. KIM  
Assistant Attorney General  
Civil Rights Division

7   
8 ~~JEREMIAH GLASSMAN (D.C. Bar No. 172395)~~  
9 ~~EMILY H. MCCARTHY (D.C. Bar No. 463447)~~  
10 Attorneys for the Plaintiff  
11 U.S. Department of Justice  
12 Civil Rights Division  
950 Pennsylvania Ave., NW  
Educational Opportunities Section  
Patrick Henry Building, Suite 4300  
Washington, D.C. 20530  
Phone: (202) 514-4092  
Fax: (202) 514-8337

13 This the 29<sup>th</sup> day of January 2007.

1 CERTIFICATE OF SERVICE

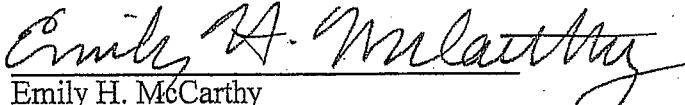
2 I hereby certify that on this 29<sup>th</sup> day of January 2007, I served a copy of the foregoing  
3 *United States' Response to the Court's Order of August 24, 2006* by prepaid Federal Express to  
4 the following counsel of record at these addresses:

5 Angela Miller, Esq.  
6 Deputy General Counsel  
7 San Francisco Unified School District  
8 555 Franklin St., 3<sup>rd</sup> Floor  
9 San Francisco, CA 94102

10 Vince Chhabria, Esq.  
11 Deputy City Attorney  
12 City Hall, Room 234  
13 1 Dr. Carlton B. Goodlett Place  
14 San Francisco, CA 94102-4682

15 Christopher Ho, Esq.  
16 The Legal Aid Society – Employment Law Center  
17 600 Harrison Street, Suite 120  
18 San Francisco, California 94107-1387

19 Edward H. Steinman  
20 Santa Clara University School of Law  
21 500 El Camino Real  
22 Bergin 212  
23 Santa Clara, CA 95053

24   
25 Emily H. McCarthy  
26 Counsel for the United States



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# ATTACHMENT 1

OCT 22 1976

CLERK, U. S. DIST. COURT  
SAN FRANCISCO

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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3  
4 KINNEY KINMON LAU, et al.,  
5 Plaintiffs,

6 and

7 UNITED STATES OF AMERICA,  
8 Plaintiff-Intervenor,

9 vs.

10 DR. EUGENE HOPP, et al.,  
11 Defendants.

1 Civil No. C-70-627 LHB

CONSENT DECREE

12  
13 On January 21, 1974 the United States Supreme Court determined that the  
14 defendants were in violation in Title VI of the Civil Rights Act of 1964, and  
15 the implementing regulations of the Department of Health, Education and Welfare,  
16 for its failure to provide special programs designed to rectify the English  
17 language deficiency of Chinese students who do not speak or understand English,  
18 or are of limited English-speaking ability, and for its failure to provide  
19 equal access of these students to the school district's instructional program.  
20 The Supreme Court remanded the case to this Court for the fashioning of appro-  
21 priate relief, directing the Board of Education "to apply its expertise to the  
22 problem and rectify the situation." Lau v. Nichols, 414 U.S. 563 (1974).

23 On or about May 17, 1974, the Court was informed that the defendants had  
24 contracted with the Center for Applied Linguistics to provide technical  
25 assistance in the preparation of a Master Plan in response to the Supreme Court  
26 decision. At the same time, a Citizens' Task Force consisting of representatives  
27 of the San Francisco community was established by the school district to assist  
28 the Center. In May 1975, the Task Force submitted "A Master Plan for Bilingual  
29 Bicultural Education in the San Francisco Unified School District" to the  
30 defendant Board. On March 25, 1975, the defendant Board approved this plan by  
31 a resolution which made some modifications to the Master Plan. The four volume  
32 plan and the March 25, 1975 Board Resolution were submitted to the Court by the  
defendants on May 30, 1975.

1 In adopting the plan, the Board Resolution directed the Superintendent  
2 provide the Board with necessary data to implement the Master Plan by September  
3 1975. On May 20, 1975, the Bilingual Department of the SFUSD submitted to the  
4 Board a "Status Report, Bilingual Master Plan Implementation for 1975-76."

5 The parties to this case, being desirous of implementing a solution to  
6 the subject matter of this action without the expense of litigation, have agreed  
7 to entry of this decree, and the Court being of the opinion that entry of this  
8 decree will effectuate the mandate of the Supreme Court in this case.

9 IT IS ORDERED, ADJUDGED AND DECREED:

10 1. The San Francisco Unified School District (hereinafter SFUSD) shall  
11 implement the Master Plan for Bilingual-Bicultural Education, as approved by  
12 the March 25, 1975 modifying Resolution of the School Board, filed with the  
13 Court on May 30, 1975 for the Chinese, Filipino and Spanish language groups of  
14 the SFUSD. The SFUSD shall implement other special programs and English as  
15 a Second Language Instruction (ESL) as defined in the reports submitted in  
16 accordance with paragraph 3(a) herein for the non and limited English speaking  
17 students of the other language groups of the SFUSD.<sup>1</sup> Wherever feasible, the  
18 other language group students shall receive the bilingual instruction. When-  
19 ever a language group may be defined as major in accordance with the formula  
20 to be reported in accordance with paragraph 3j herein, the SFUSD shall implement  
21 the bilingual program of the Master Plan for that language group.

22 2. On or before November 15, 1976, the SFUSD shall adopt and submit to  
23 the Court a report setting forth a timetable with specific dates indicating  
24 when various aspects of the plan will be fully implemented. Such a report may  
25 parallel the Timelines in the Master Plan (Vol. 3b, p. 325), but in any event  
26 should include specific dates for full implementation of each aspect of the  
27

28  
29 <sup>1</sup>The SFUSD has more than 18 distinct language groups. In their 1976-77  
30 application for funds under the Emergency School Aid Act the SFUSD identified  
31 13,353 non and limited English speaking students. The Chinese language group  
32 contained 5,318 students; the Filipino language group contained 2,282 students;  
and the Spanish language group contained 3,303 students. These three language  
groups contained 10,903 students or 82% of the SFUSD's non and limited English  
speaking students; and for the purposes of interpreting the Master Plan are  
presently considered major language groups by the SFUSD.

1 plan. The report shall also include annual projections of the number, by  
2 language group, of non and limited English speaking students to be enrolled in  
3 the bilingual classes of the SFUSD who are not presently in bilingual classes  
4 and who wish to be in bilingual classes.

5 3. The progress made in implementing the plan will be reported annually  
6 by the defendants to the Court, with copies to be served on counsel for each  
7 of the parties. The first report shall be filed by November 15, 1976 and  
8 thereafter on each November 15, until further order of this Court. The defendant  
9 shall maintain records reflecting semiannual changes in the student enrollments  
10 of the programs enumerated in paragraph 1, and of the number of non and limited  
11 English speaking students in the SFUSD. The report shall contain the following  
12 information:

13 a. A detailed report on the status of the priorities  
14 and objectives for implementing the Master Plan, as outlined  
15 in the Status Report, Bilingual Master Plan Implementation  
16 for 1975-76, dated May 20, 1975.

17 b. The number of students by language group<sup>2</sup> whose  
18 primary or home language is other than English, and the  
19 number of students by language group who have been  
20 determined as non or limited English speaking, by school  
21 and by grade. An explanation of how these determinations  
22 were made shall be included.

23 c. The number of non and limited English speaking  
24 students by language group, grade and school assigned to:  
25 (1) bilingual classes; (2) other special programs designed  
26 to rectify their English language deficiency; and (3) to  
27 ESL classes. The SFUSD shall provide a detailed description  
28 of the other special programs of (2) and the ESL programs  
29 of (3).  
30

31 <sup>2</sup>The term "language group" shall mean the specific language of the  
32 student, and shall not be listed in a categorical manner such as "other  
white" or "other non-white."

1 d. The number of non and limited English speaking  
2 students by language group, grade and school who are not  
3 participating in the bilingual classes or programs specified  
4 in paragraph 3(c) above.

5 e. The number of English-dominant students by race and  
6 ethnic origin that participate in each class of the bilingual  
7 classes or programs specified in paragraph 3(c) above.

8 f. A description of the manner in which non and limited  
9 English speaking students, and English dominant students, are  
10 recruited and assigned to the bilingual classes, and other  
11 programs specified in paragraph 3(c) above.

12 g. The total number of faculty and staff by language  
13 group who are bilingual, and have the ability to instruct  
14 in a language other than English; and the number of faculty  
15 and staff by language group teaching bilingual classes; and  
16 the number who are certified by the State of California to  
17 teach in bilingual programs.

18 h. The number of teacher aides by language group assigned  
19 to bilingual classes; and the number who are certified by the  
20 State of California to teach in bilingual programs.

21 i. The number of new faculty and staff hires who are  
22 bilingual and have the ability to instruct in a language  
23 other than English.

24 j. A description of the method for determining "major"  
25 and "other" language groups in the SFUSD, and an identification  
26 of which language groups have been determined "major" and  
27 "other."

28 k. Identification of the schools containing "model  
29 bilingual programs" for "major" language groups in the  
30 district, and of schools containing "satellite bilingual  
31 classes," as described in the Master Plan.

32 ///

1           4. The SFUSD shall establish a Community Council charged with the  
2 responsibility for assisting in monitoring the plan. The function of the Council  
3 shall be advisory in nature, and its members shall be appointed by the Board  
4 of Education. The Council may include parents of children in the affected  
5 programs, parents of children not in affected programs, as well as other  
6 interested members of the community. This Council shall be fully operative  
7 within sixty days of this order.

8           a. The SFUSD shall enlist the assistance of the  
9 Council in filing an annual progress report. The Council  
10 may prepare and simultaneously file a minority report  
11 discussing the progress made in implementing the Master  
12 Plan, and recommendations for any changes or modifications  
13 in implementing the Master Plan.

14           b. The SFUSD is directed to assist the Council in  
15 performing its responsibilities under this paragraph. The  
16 SFUSD will provide an appropriate location for the Council  
17 to meet on a regular basis; and will provide clerical  
18 assistance to the Council for typing the Council's annual  
19 report.

20           5. The parties to this action may file objections with this Court to  
21 the progress or manner of implementation of the Master Plan or the programs  
22 defined in paragraph 1 as reported by the SFUSD. Such objections shall state  
23 specifically the facts and reasons upon which such objections are based. The  
24 SFUSD shall have thirty days in which to respond, and if the parties are unable  
25 to resolve the matter, the Court, upon application of any party, shall hold  
26 a hearing on the objections and determine whether the SFUSD has complied with  
27 this order. The SFUSD shall make available for inspection and copying all  
28 records relating to matters covered by the Annual Report, and shall provide such  
29 other information relating to the implementation of the Master Plan as is  
30 reasonably necessary to evaluate the progress of implementation of the Master  
31 Plan.

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

So ordered this            day of            1976.

LLOYD H. BURKE

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

\_\_\_\_\_  
JEREMIAH GLASSMAN  
United States Department of Justice for Plaintiff-Intervenor United States of America

\_\_\_\_\_  
EDWARD H. STEINMAN  
KENNETH HECHT for Plaintiff  
KINNEY KINMON LAU, et al.

\_\_\_\_\_  
GEORGE E. KRUEGER for  
Defendant San Francisco Unified School District

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4 **ATTACHMENT 2**  
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Julie Maxwell-Jolly

Summary of English Learner program observations in the SFUSD

JEREMIAH GLASSMAN, D.C. Bar No. 172395  
 EMILY H. MCCARTHY, D.C. Bar No. 463447  
 United States Department of Justice  
 Civil Rights Division  
 Educational Opportunities Section  
 950 Pennsylvania Avenue, N.W.  
 Washington D.C. 20530  
 Telephone: (202) 514-4092  
 Facsimile: (202) 514-8337

Attorneys for Plaintiff-Intervenor  
 UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

KINNEY KINMON LAU, et al.,

No. C-70-627 LHB

Plaintiffs,

UNITED STATES OF AMERICA,

DECLARATION  
 OF DR. JULIE  
 MAXWELL-  
 JOLLY

Plaintiff-Intervenor,

vs.

DR. EUGENE HOPP, et al.,

Hearing Date: N/A  
 Time: N/A  
 Court: Hon.  
 Vaughn R. Walker

Defendants.

I, DR. JULIE MAXWELL-JOLLY, declare as follows:

1. My name is Julie Maxwell-Jolly. I am currently a researcher at the University of California, Davis. My work focuses on the education of English Learners and I have extensive experience and expertise regarding the provision of educational services to this population of students. My resumé is attached.

2. Based on my expertise in this area, I was retained by the United States Department of Justice to review the programs for English Learners in the San Francisco Unified School District. This review was conducted through site visits to eight district schools. The schools included the full range of grade levels, K-12, and four of the six program models

Julie Maxwell-Jolly

Summary of English Learner program observations in the SFUSD

available to English Learners in the district. The programs I observed are described on pages 7-10 of the district Lau Report and include: the Newcomer Program, Two Way Immersion, Maintenance Bilingual, and Intensive English. The program models not included in these visits were Transitional Bilingual Education and Total Immersion with Cantonese and English instruction and Mandarin enrichment. The six models have four basic elements according to page 7 of the district Lau report: English language development, Native Language Content Courses, Specially Designed Academic Instruction in English (SIDAIE), and Cross-Cultural Understanding. I observed all four of those program elements.

3. At each site, I interviewed the principal and the teacher or assistant principal who was most knowledgeable about the school's English Learner programs. This individual was often the administrator or coordinator of English Learner programs at the school. I also spoke with teachers and visited classrooms representing the range of program models offered at each site.

4. These school visits, interviews, and classroom observations raised a number of concerns regarding the education provided to English Learners in the San Francisco Unified School District. During these site visits I observed the problems I describe below. Although these concerns were not evident in every single school and not present to the same degree at every site, I observed each in multiple instances. While these issues were of concern across the eight sites I visited, I believe observations and interviews at additional schools would indicate whether these issues are pervasive or not throughout the district.

#### INSTRUCTION

5. I noted several issues with regard to the program of instruction for English Learners, the most pervasive involving English language development (ELD) instruction. English language development instruction is an important part of the education program of every English Learner. ELD teaches non-native-English-speaking students how to use English in a variety of educational settings, facilitating their timely and effective development of

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English language proficiency and enhancing their ability to progress academically in all-English instructional settings. ELD is a necessary component of the instructional program for all non-native English speakers with those at higher levels of English proficiency needing more instruction in learning to read and write in a second language. As long as students are identified as English Learners, ELD instruction should be a part of their education program. At some of the schools where I observed English Learners who scored at a level 4 or 5 on the California English Language Development Test (the CELDT), students did not receive ELD instruction. This was the practice at Mission and Burton High Schools and at Denman Middle School. In addition, it was not clear that English Learners at any level of proficiency received consistent ELD instruction for a sustained period every or most days at all of the schools where I observed. Many of the classrooms I visited that had daily schedules posted on the wall did not include ELD as one of these daily activities.

6. Another instructional concern involves the teaching of the core curriculum to students in classrooms designated as providing English Learners access to the curriculum via instructional strategies designed for teaching content to these students. Together these strategies are called Specially Designed Academic Instruction in English (SDAIE) and include a range of methods for conveying academic subjects to English Learners. In five of the eight schools at least one teacher who was presenting a lesson that would lend itself to these strategies was not using them. These schools were: Alvarado Elementary, Horace Mann and John Denman Middle Schools, and Mission and Burton High Schools.

7. An additional instructional concern was the lack of consistency and the lack of fidelity to the model in programs that purport to be maintenance bilingual programs. I observed both of these issues at Daniel Webster Elementary, where the program described as a maintenance bilingual model (K-5) actually included only grades 1-4, where the curriculum available in the native language was limited according to teachers and the principal, and where the program had changed from a maintenance to a transitional bilingual program apparently without changing the description of the program provided to parents and others.

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8. Two other schools where I observed program choices which I believe to be pedagogically unsound included Newcomer High School and Horace Mann Middle School. The concern at Newcomer High School was that teachers in the bilingual program provide instruction in students' native language while using texts and written materials only in English. These materials might be helpful as supplemental to the core instruction and to materials in the students' native language that would accompany and complement this instruction, but are not appropriate as the foundation materials for a native language instruction class designed for newcomer students. Another questionable practice was the Horace Mann Middle School's placement of English Learners in classrooms with low-achieving English only students (those who are below basic or far below basic on the California Standards Test) for their English instruction. These two groups of students are likely to have very different reasons for their low levels of English, and thus need different educational treatments. In addition, placing English Learners in classrooms where the only English language models (other than the teacher) are students who score the lowest on English achievement tests is not sound practice.

## MATERIALS

9. Adequate numbers of a variety of high quality instructional materials are central to any education program. Teachers depend on materials to provide the framework of the skills and content they cover in each subject area. Materials that effectively communicate the skills and knowledge that are the goals of a program are critical to how well students learn those skills and content. Several of my concerns about the programs I observed involve instructional materials. One of these was the availability of appropriate native language materials. School sites with bilingual programs consistently said that they did not have enough native language materials, particularly in Cantonese. The principal reason the schools cited for this was that the state of California had not adopted enough native language materials and that although there were other materials on the market, these had to be purchased with supplemental funds, which were scarce. However, the California Department of Education website lists scores of state adopted texts in Spanish,

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and math materials in Cantonese as well ([www.cde.ca.gov/ci/cr/cf/an1/plsearch.asp](http://www.cde.ca.gov/ci/cr/cf/an1/plsearch.asp)). In some schools teachers mentioned translating and developing materials themselves because of the lack of available native language materials at their school.

10. Another concern with regard to materials was the appropriateness of some of the English language texts for English Learner students: several teachers commented that students could not read the texts and therefore could not understand much of the class content. These teachers needed materials that would be accessible to the English Learners in their classrooms on the same topics that the teacher was covering as a supplement to the regular materials.

11. Teachers also commented on the need for additional materials for English language Development. Although all of the schools had curriculum packages, teachers noted that no single package was adequate to cover all of the grammar and language genres that students needed to learn.

#### TEACHERS

12. Properly trained teachers are widely recognized as the key to the effectiveness of any instructional program. Teachers who are well trained and able to use the skills necessary to meet the educational needs of their particular students can have a positive effect on learning, just as teachers who do not have these skills can limit how much their students learn. This is particularly true with regard to teachers of students who have special needs such as those who are non-native-English-speakers. Most of the principals I interviewed mentioned their inability to hire the teachers that they needed who had specific skills for teaching English Learners. In some cases this was because of the scarcity of teachers with particular skills, such as Cantonese bilingual teachers. Daniel Webster Elementary had sought the assistance of the district in finding a teacher with these qualifications but said the district did not provide help. However, in the majority of cases principals said that they were constrained by the need to hire teachers who had been released by other sites due to declining enrollment. Burton High School had lost some English Learner qualified

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staff because of having to let ten teachers go after the start of the 2006-2007 school year due to declining enrollment.

13. Another issue with regard to teachers was that some teachers did not have the appropriate certification and training for teaching these students (either a Culture, Language and Academic Development, CLAD, certification or the Bilingual CLAD). In particular, about half of the staff at Mission High School have a CLAD certificate, but English Learner students are dispersed throughout the school so that many more than half of the teachers have English Learners in their classrooms.

#### PROFESSIONAL DEVELOPMENT

14. As I noted above, well prepared teachers are key to student learning. Many of the teachers in the San Francisco Unified School District teach English Learners in regular classes. These teachers must find the ways to convey classroom content via the English language to students who are not yet proficient in English. This is a significant pedagogical challenge and one which takes significant teacher expertise. Teachers that I interviewed at these schools cited this challenge saying that they needed to participate in more professional development designed to provide greater skills and understanding for instructing English Learners.

15. In addition, 4 of the 8 principals I interviewed said that although their staffs were in compliance with district requirements for certification, many of their teachers were not adequately prepared to work effectively with English Learners and needed more professional development to better prepare them for English Learner instruction. This was borne out by classroom observations in which I very often did not see the kinds of English Learner strategies that I would expect to see from teachers trained to work with these students. Some teachers and principals commented that the availability of district provided professional development opportunities for working with English Learners was limited. Teachers at Alvarado and Daniel Webster expressed this concern, and the principal and teachers at Burton High School said that they did not have adequate

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professional development funds to cover all of the teachers who needed more English Learner training.

#### DATA AND EVALUATION

16. Data regarding student achievement are a critical piece of the picture of how well an education program is working, and gathering these data is an important part of ongoing program evaluation and improvement. I found that principals were consistently unfamiliar with achievement data reflecting how their English Learners were doing compared to English proficient students. Moreover, most of the principals could not compare the achievement of English Learners in different kinds of programs. Only one principal (at Gordon Lau Elementary) was able to tell me that the English Learner students in each of the program models at the school had similar rates of redesignation from English Learner to English fluent, and that this rate has been consistent over time. According to those I interviewed, this comparison of the achievement of English Learner students who are in different program models is not analyzed either at the school or the district level. Thus, despite all of the testing and evaluation in which students participate, schools are not using this data to evaluate how students are doing in the different programs and to adjust those programs as necessary.

17. Another concern is that students who study academic content in their native language are not being tested to assess their achievement in that language. Although interviewees said there is no test of academic skills in Cantonese, one does exist in Spanish. According to the district they gave the "Aprenda" test of academic skills in Spanish last year, but principals said they did not receive these data. Furthermore, principals reported that the district has decided that it will no longer administer this test except for assessing the placement of newcomer students. Thus students who are studying academic subjects in Spanish and who could be tested in Spanish, are not. This point needs further clarification to ensure that the district is using an important tool for evaluating the effectiveness of its native language programs.

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**PARENT COMMUNICATION**

18. The means and capacity for communicating with parents were inconsistent across the schools I visited. Some teachers and principals called on paraprofessionals, fellow teachers, or other staff members to interpret during phone calls, parent conferences, and parent meetings. Other schools had counseling staff who could handle sensitive issues with parents. Some schools had bilingual staff and used their own funds to hire teachers for extra hours of translation. Other schools paid staff or even students (at Mission High School) for in-house translation. Although the district Lau Report mentions the availability of translation services from the translation office it maintains, every interviewee except one (the principal of Howard Mann Middle School) said that they did not use this office because the turnaround time was too great—from two to four weeks.

**SPECIAL PROGRAMS**

19. Most of the interviewees said they could evaluate students for special education. However, interviewees at Daniel Webster Elementary and Newcomer High School said that it took a very long time for the district to evaluate students in their native language(s) for special education. Serving English Learners who need special education was more of a challenge at those schools. Teachers at Alvarado Elementary and Mission High School said that getting special education services in Spanish is a problem, and those at Burton High School said that they have many English Learner special education students and that these students often do not get ELD instruction. This is an area where, since I did not visit any special education classrooms or observe anyone engaging in special education services in the classroom, further evaluation is needed for greater clarification. The same is true with regard to English Learner access to Gifted and Talented Education (GATE) programs, Honors courses, and AP classes. For example, one of the major criteria used for GATE recommendation is standardized test scores, yet students in native language programs are not being tested in their language of instruction. As a result they would be unlikely to score highly on an English language content test until they gain greater English proficiency.

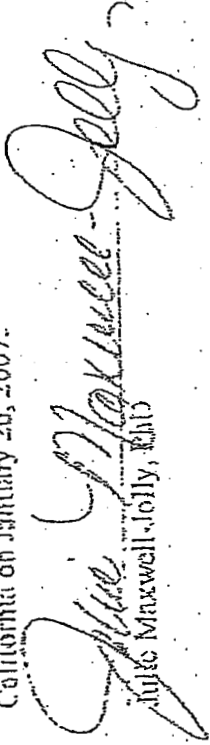


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20. In conclusion, as described above, I observed several practices and policies across these eight schools that I believe raise serious concerns about some of the facets of the education that the San Francisco Unified School District is providing to its English language learners. I believe it would be important to delve deeper into district practices by visiting some additional schools in order to determine these problems are present districtwide.

21. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in Sacramento California on January 26, 2007.

  
Julie Maxwell-Jolly, ELS

## Curriculum Vitae

**Julie Maxwell-Jolly**  
6349 Faustino Way  
Sacramento, CA 95831  
(530) 752-1533  
[jrmaxwelljolly@ucdavis.edu](mailto:jrmaxwelljolly@ucdavis.edu)

### **Academic Preparation:**

**Ph.D. in Education**, University of California, Davis, November 2001.

Concentrations: Education policy with regard to linguistically and culturally diverse students particularly in areas of teacher preparation, professional development, and methods and practices for the effective schooling of these students. I have a strong background in qualitative research methods and knowledge and experience with some quantitative methods.

Dissertation: Teacher response to mandated top-down reform: Exit, voice and loyalty in the context of Proposition 227.

Advisor: Dr. Patricia Gándara

**M.A. in Bilingual Cross-cultural Education**, California State University, Sacramento, 1985.

Advisor: Dr. Tom Carter

**Bilingual Specialist Credential**, 1985

**Single Subject Credential, Spanish**, by exam, 1984

**Single Subject Credential, Social Studies**, California State University, Hayward, 1976

**Multiple Subjects Credential**, California State University, Hayward, 1976

**B.A. in Anthropology**, University of California, Berkeley, 1974

Concentration: Mesoamerican cultural anthropology

### **Languages:**

Reading, writing, and speaking proficiency in English and Spanish

**Professional Experience:**

Senior Researcher: UC Davis School of Education

Designing, managing, carrying out research in a variety of areas principally related to education policy with regard to immigrant and English learner students.

**Executive Director: Center for Applied Policy in Education, UC Davis School of Education**  
Overseeing the inception of a new policy center designed to link policy, research and practice as well as Designing, managing, and carrying out policy research conducted by the Center.

**Senior Researcher-Policy Analysis for California Education**

February, 2003-present

Helping design and carry out research proposals, literature reviews, and policy seminars. Participating in meetings with university and policy organizations.

**Post-doctoral fellow with the Linguistic Minority Research Institute**

May, 2002-January, 2003

Investigating the current numbers of bilingual (BCLAD) teachers in classrooms with English learners and their professional experiences post-227.

**Coordinator, Linguistic Minority Research Institute Education Policy Center at UC Davis, 1996-2001**

Carried out various research projects on a variety of subjects with regard to cultural and linguistic minority students. Associated publications have been disseminated for use in both academic and policy settings.

**Supervisor of Teacher Candidates, California State University at Sacramento, fall, 1997 and Winter 1994-1995**

Supervised student teachers and interns in bilingual classrooms.

**Placement Specialist, California State University at Sacramento, High School Equivalency Program for Migrant Students and Adults (HEP), 1995-1996**

Served as liaison between several local colleges, training agencies, and the HEP program. Worked with program graduates providing assistance with enrollment in college or vocational training programs, on-the-job- training, and/or English as a second language classes.

**Project Coordinator, researcher, Multicultural Education, Training, and Advocacy (META), Inc. 1987-1995**

Coordinated statewide program of parent and teacher trainings on the legal rights of limited English proficient students, conducted workshops in Spanish and English for parents, teachers, and administrators, wrote bilingual training materials, and prepared quarterly reports to funding agency. Coordinated and carried out a research project on secondary level limited English proficient students. Responsibilities included facilitating meetings of advisory board, producing reports to the funding foundation and the board, designing survey instruments and protocols, collecting and analyzing data from 15 study site schools, and preparing final report.

**Education Consultant, California Rural Legal Assistance (CRLA) and CRLA Foundation, 1985-1987**

Conducted survey of school districts regarding the effects of minimum competency testing and the access to remedial summer school programs of language minority students, supported efforts of a coalition of education, parent, and community groups to renew bilingual legislation.

**Research Consultant, California State University, Sacramento, 1986-1987**

Co-designed a study of minority undergraduates intending to become teachers to determine barriers to completion of their degrees. Conducted all interviews and produced a final report, which contributed to the evaluation of the CSUS teacher education program ability to attract and retain minority candidates.

**Bilingual teacher, Sacramento City Unified School District, third grade, 1982-1983**

**Bilingual coordinator, bilingual teacher, ESL tutor, and teacher of Spanish for teachers, Los Angeles Unified School District, 1979-1982**

**Publications:**

Maxwell-Jolly, J., Driscoll, A. & Carrillo, L., (2006) Transferring from Community College to Four-year College: Aspirations and Realities of Latino Students in California. Berkeley: California Policy Research Center.

Venezia, A. & Maxwell-Jolly, J. (2006). Uneven Opportunity to Learn in California's Schools: Crafting Standards to Track Quality, Working Paper 06-4. Berkeley: Policy Analysis for California Education (PACE).

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Maxwell-Jolly, J. (2000). Factors influencing implementation of mandated policy change: Proposition 227 in seven northern California school districts. *Bilingual Research Journal*, 24 (1&2), 37-56.

Gándara, P. & Maxwell-Jolly, J. (2000). Preparing teachers for diversity: A dilemma of quality and quantity, The Center for the Future of Teaching and Learning, Santa Cruz.

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Gándara, P. with Maxwell-Jolly, J. (1999), Priming the pump: Strategies for increasing the achievement of underrepresented minority undergraduates. The College Board, New York.

Maxwell-Jolly, J. & Gándara, P. (1997). A report review of Diane August and Kenji Hakuta's Improving schooling for language minority children: A research agenda. *Bilingual Research Journal*, 2 (2&3), 305-323.

### **Reports and other materials:**

Promoting Academic Literacy Among Adolescent English Language Learners: A synthesis of research and conferences sponsored by the William and Flora Hewlett Foundation on best practices for instruction of academic English to English language learners at the secondary level (2006).

The Search for Success: Effective programs for limited English proficient students in Fifteen California secondary schools, META, Inc. (1994).

Nuestros hijos, nuestro futuro: Introducción a los derechos educativos. META, Inc. (1990) A Spanish language videotape and guidebook designed for parents on regarding the legal rights of language minority students in California public schools.

The rights of limited English proficient students: A handbook for parents and community advocates. META, Inc. with CRLA Foundation, (1988). A comprehensive manual with information on appropriate teaching methodologies, assessment, teacher preparation, state and federal legal requirements, and other information.

CSUS education equity report (1987). A report based on minority undergraduates who were intending to become teachers.

Compendium of materials for policymakers on minimum competency testing and related educational issues, CRLA Foundation, (1985).

Final report on 24 school districts' access to remediation programs for language minority students who fail minimum competency tests: A tool for advocates and policymakers, CRLA Foundation, (1985).

**Papers presented at conferences:**

Listening to the Teachers of English Learners: Presented research findings at the American Association of Education Research, Montreal, Canada, 2005.

Listening to the Teachers of English Learners: Presented research findings at the WestEd conference on teacher quality, San Francisco, CA, 2004.

Policy implications of Proposition 227: a look into the future. Presented at the Linguistic Minority Research Institute conference, Irvine, California, May, 2000.

Proposition 227 implementation in seven Northern California school districts. Presented at the National Association of Bilingual Education Conference, San Antonio, Texas, 1999.

Preliminary findings of study of initial Proposition 227 implementation. Presented at the Linguistic Minority Research Institute conference, Sacramento, California, 1998.

**Other conference presentations:**

The current context of California education policy, 2002. Presentation for teachers, administrators, and researchers at the Harvard Conference on Education Policy: from Rhetoric to Reform.

The rights of limited English proficient students. Presentations for administrators and teachers at the conference of the California Association for Bilingual Education (CABE), 1988-1991.

Parent training institute on the rights of limited English proficient students. Half day institute at CABE conference, 1988, 1989.

**Research agenda:**

Professional development and preparation of current and prospective teachers for working effectively with culturally and linguistically diverse students including studies looking at comparisons of teachers with various kinds of preparation (BCLAD, CLAD) in relation to student outcomes.

Curriculum, approaches, and policy that will enhance the academic achievement of language minority students at all levels of the education system.

The pursuit of educational equity for all students.

**References:**

Dr. Patricia Gándara, Professor  
School of Education  
University of California, Los Angeles

Davis C. Campbell  
President, California School Boards Association (Retired)  
Yolo County School Board

Dr. Harold Levine  
Dean, UC Davis School of Education

Dr. Russell Rumberger  
Co-Director Linguistic Minority Research Institute  
Professor, UC Santa Barbara