

## **San Francisco Unified School District**

The 1998-1999 San Francisco Civil Grand Jury noted that in June of 1998 the voters of the State of California enacted Proposition 227 limiting bilingual teaching. The Grand Jury was also aware that many years prior to this the District had participated in a consent decree in the federal court whereby the SFUSD was required to provide bilingual instruction to the students in the District who did not have English as their native language.

The Grand Jury was desirous of determining what effect Proposition 227 would have on the District's educational system and particularly the impact on the funding of the system. The Grand Jury was also interested in whether Proposition 227 would impact the District's right to use funds that it received from various state, federal, and local sources for bilingual education purposes and whether the District would have to change any of its numerous language programs to comply with the new law. The Grand Jury did note that the District's Superintendent, Waldemar Rojas, stated publicly that the SFUSD would not obey the mandates of Proposition 227.

There are approximately 65,000 students in the SFUSD in 115 schools. Approximately 20,000 of these are classified as Limited English Proficient and receive part to all of their school instruction in a language other than English. The District receives over \$30,000,000 a year from the state and federal governments for bilingual teaching. The amount received is based on a per student computation; the more students taking some type of bilingual instruction, the more money the District receives.

However, as Assistant Superintendent in charge of the Language Academy and other language programs, Dr. Rosita Apodaca stated, the District is not obligated to spend all monies received from the state and federal governments on bilingual education; nor does it. According to Dr. Apodaca, the District may spend these funds for any District purpose, and does.

Since the passage of Proposition 227, which in part purports to prohibit bilingual education as was conducted prior to 1999, the District has continued to provide bilingual education as it had in the past, but calls the program by several other names, e.g., English Plus, rather than Bilingual. In all other respects the teaching of students with limited English proficiency is the same as it always has been.

The SFUSD was a signatory to a consent decree issued by a federal court (*Lau v. Nichols*) requiring the District to offer a wide range of bilingual programs, including courses of English immersion. Under Proposition 227, Districts are required to replace bilingual education with a one-year program of intensive English-language instruction to students who speak little or no English.

With the foregoing in mind, the Grand Jury commenced its inquiry into the economic effect of Proposition 227 and the operations of the District's language program. Unfortunately, as set out below, it met with an almost total lack of cooperation from the various District Administrators with whom it dealt. Initially this conduct consisted of repeated delaying tactics. The following are just a few of the District's delaying tactics and examples of their interference with the Grand Jury's assigned duties:

### A. Delay of and Interference with Grand Jury's Investigation

The Grand Jury in its investigations of numerous departments of City and County government, and numerous Districts operating within the City and County, was treated universally with courtesy, cooperation, forthrightness and honesty by all persons in every phase of its investigations with the notable exception of the administrators of the SFUSD. It should be noted that the school teachers and principals all conducted themselves as other representatives of City and County governmental agencies and Districts, and the Grand Jury wishes to thank them for their cooperation and forthrightness. Even the Municipal Railway, despite the numerous problems in its operation, treated the members of the Grand Jury with courtesy, openness and, as far as the Grand Jury was aware, complete cooperation. In view of the foregoing, it is most perplexing to find administrators employed by the School District to be lacking in forthrightness. They were also adversarial and confrontational. Our experience with the SFUSD administrators was such that it appeared that they consciously threw road blocks in the way of the investigators from the Grand Jury at virtually every step of its investigation. Representatives of the District gave the appearance of a conscious attempt to obfuscate the realities of the operation of the SFUSD.

The Grand Jury's problems with the District developed almost immediately at the commencement of the Grand Jury's investigation into the compliance of the District with the mandates of Proposition 227, which was approved by a 61%-39% vote in June of 1998.

1. The first inquiry of the Grand Jury was to ask the District if it had ever obtained from the City Attorney a legal opinion as to the effect of Proposition 227 on the Federal Consent Decree under *Lau v. Nichols* (which ordered the implementation of bilingual programs) which was still in place. At this time, it should be noted that no one had asked about the contents of any such opinion, assuming the SFUSD asked for and received such an opinion from the City Attorney. Both the SFUSD and the City Attorney claimed that the Grand Jury's request called for a breach of a confidential communication and placed the City Attorney in a position of breaching that confidentiality and created a conflict of interest. The Grand Jury was surprised and chagrined that the City Attorney would take this position in view of the fact that the City Attorney was also the designated attorney for the Grand Jury.

We were then referred to the District Attorney to assist in getting this information, but were told by them that they were not involved in civil matters, were not informed in this area of the law, and thus could not represent the Grand Jury.

In an effort to compel both the City Attorney and the SFUSD to answer our question, we were referred to the Attorney General of the State of California, who also declined to represent us.

As provided by law, the Grand Jury went to the presiding judge of the Superior Court and requested the appointment of special counsel to represent the Grand Jury. Permission was granted contingent upon clearing the cost with the court. The presiding judge was hopeful that a law firm with expertise in School District law would do the work on a *pro bono* basis. On investigation, it was determined that the City would have to pay between \$300 and \$400 per hour for counsel for the Grand Jury. By this time, it was late April 1999, almost nine months since our first inquiry and, as will be seen, the question became moot.

As previously stated, the Grand Jury asked the District to request that our inquiry be answered by the City Attorney. This the District refused to do, which was shocking in view of the fact that some eight (8) months later, on April 26, 1999, in sworn testimony before the Grand Jury (RT 6:19-22), the superintendent, Waldemar Rojas, denied that there ever existed such an opinion. By this time, the SFUSD had managed to delay the Grand Jury investigation to the point that there were only two (2) months left in its term. Not once did either the City Attorney's office or the School District tell the Grand Jury that there did not exist such an opinion letter. To the Grand Jury, this conduct smacked of stonewalling and of a blatant attempt to prevent the Grand Jury from doing its assigned duty.

2. Dr. Rojas promised to provide the Grand Jury during the taking of his sworn testimony the following:

a. All legal opinions generated by or for the District as to the effect of Proposition 227 on the federal court consent decree in the Lau case (RT 8:22-28, 9:1-3).

b. A list of schools in the district where there are bilingual programs and the number of students involved in these bilingual programs on any given day. (RT 12:13-23).

c. List of bilingual classes pre-effective date of Proposition 227 and post its effective date by:

(1) school; and

(2) academic level (elementary, middle and high school) (RT 13:1-5)

The foregoing information was to be provided within two weeks of April 26, 1999. The Grand Jury has never received any of this information.

3. The Grand Jury then requested the opportunity to visit schools to see for themselves the operation of the bilingual program or other programs by other names conducted by the District to teach children whose second language is English to learn how to speak, read and write English. We were told that members of the Grand Jury were security risks, that we would be disrupting classes, and that the school needed weeks of advance notice to arrange their school days. Members had to wait three to four weeks before being permitted to enter the schools. It should be mentioned that no more than two members of the Grand Jury were ever present at any school at any one time, and that any parent may appear unannounced to view his or her child's class.

The procedure used was to speak to the principal, and then visit three to four classes, spending 10-15 minutes in each class. Our primary desire was to speak to the teachers to find out how their language programs were conducted and if they were following the law. It was the desire of the Grand Jury to visit the schools and the classrooms as close to being unannounced as possible so that they could get a feel for what was actually being taught, rather than what was being staged for their benefit. We informed Dr. Rojas that we wanted to do this without the presence of members of his administrative staff or of the Language Academy. Dr. Rojas agreed that this would be done (RT 23:6-7). In spite of his agreement to do otherwise, each and every Grand Jury visit to any school involved the presence of a representative of the Language Academy or one or more other school administrators and, in some cases, school District lawyers. In one of the schools, Ms. Den, a District lawyer, was present when members of the Grand Jury

arrived, after and in spite of Dr. Rojas' assurance that this would not happen. On several occasions, Ms. Den instructed the principal not to answer the Grand Jury's questions.

Repeatedly, school administrators and members of the Language Academy attempted to interfere in our interviews with the principals and teachers. In many situations, the answers proposed by the Administrator to our questions were markedly different from those given by a teacher or principal.

4. On March 9, 1999 the C.P.A. in charge of the SFUSD Audit for 1997 and 1998 was requested to appear informally before the Grand Jury. Attached as Appendix A is a copy of the letter and enclosures so requesting. A Mr. Gary Caine of Deloitte and Touche, LLP, was identified as the principal C.P.A. in charge of this audit. Mr. Caine was given a list of the six (6) principal questions we would be asking and asked that he appear with sufficient working papers to answer them.

Initially Mr. Caine refused to appear claiming some privilege between Deloitte and Touche and the school District which made the working papers supporting the financial statement privileged.

He also claimed that he was too busy as it was tax time, in spite of the fact that he was told we would only take two to three hours commencing at 5:30 p.m.

After pointing out that there was no privilege as it related to the Grand Jury and asking Dr. Rojas to see that the Audit was produced, Mr. Caine still failed to appear at an appointed time. This time we were told that he was in New York because he was consulting with his attorneys on his appearance.

A later delay was in negotiating a release and hold harmless agreement with the SFUSD relative to any information he would give to the Grand Jury. The Grand Jury is curious as to what the District's C.P.A. could know that would expose them to liability and why and how they could extract this agreement after receiving over \$120,000 for their audit.

Although Mr. Caine had approximately two months advance notice of the questions we wanted to ask and the materials to bring, he was totally unprepared to answer these questions when he appeared before the Grand Jury. He could not tell us how much money was received by the District for bilingual education from the federal, state or local governments or the total amount so received. The dollars involved exceed \$30 million, as Dr. Apodaca stated. It is difficult to understand, given two months notice, why the auditor could not locate this number. The same is true with respect to the expenditure of funds for bilingual purposes. In this audit the C.P.A. could not identify one dollar spent for bilingual education. Because of our other experiences with District personnel, it would lead one to believe that the District did not want us to know how little of the funds were used for the purposes intended. Given more time these numbers could be obtained.

5. It wasn't until subpoenas were about to be issued that Dr. Rojas and Mr. Caine appeared before the Grand Jury.

#### B. Manipulation of Reported Numbers

In our interviews with both teachers and principals, we found that there was a great deal of pressure placed on these educators to show numerical improvement in test scores

from year to year, just as the Superintendent was pressured to reduce the reported dropout rate in high schools

Based on the data provided by the District, it was determined that less than half of the students in the District are taking the Comprehensive Test of Basic Skills (CTBS). Further, analysis of the data provided us reveals that while student enrollment remains flat, test results for fewer students are being reported each year. This raises the question of whether the small gains in test scores reported are real or manipulated.

By the District's own count, 30% of its students are Limited English Proficient. However, over 50% of the District students do not take the standardized test. The teachers and principals have the power to excuse any pupil they feel is not ready to take the test, regardless of the student's language proficiency. The pressure on these educators to improve the test scores every year may very well determine who takes these tests.

The explanation given by Dr. Rojas for the reduced number of students taking the tests in spite of level enrollment is that, "We test all students who are eligible to be tested . . ." (emphasis added). (Letter from Waldemar Rojas to SFUSD Stakeholders dated April 15, 1999.) The key word here is "eligible." Eligibility is a subjective criterion. If for any reason the teacher, principal or administrator feels that a student should not have to be tested, the student is eliminated from the measured group. If one wants to increase test scores of a measured group, all that need be done is to eliminate more and more marginally performing students from the group.

A further example of the unreliability of figures provided by the SFUSD is the Superintendent's claim that the drop out rate for high school students was 2.5 to 3.0%. Using the District's own data, the following is a list of all high schools, the number of students reported in the eleventh grade in the previous year and the number of twelfth grade students reported in 1998. The third column shows the percentage decline in students in the twelfth grade from those in the eleventh. This computation constitutes a very rough method of measuring the drop out rate. There may be a variety of reasons other than dropping out which would help account for the decline in attendance between the eleventh and twelfth grades. The question is, where did almost 1400 high school students go if they did not drop out? In virtually all the high schools the District's numbers do not reveal declines in attendance between years nine, ten and eleven anywhere near the same magnitude as that between the eleventh and twelfth grade, which on average was over 29.3%.

	1998		
<b>HIGH SCHOOL</b>	<b>499</b>	<b>260</b>	<b>48%</b>
<b>Balboa</b>			
<b>Burton</b>	<b>326</b>	<b>218</b>	<b>33%</b>
<b>Downtown</b>	<b>46</b>	<b>30</b>	<b>33%</b>
<b>Galileo</b>	<b>490</b>	<b>275</b>	<b>44%</b>
<b>Independence</b>	<b>176</b>	<b>114</b>	<b>38%</b>

<b>International</b>	<b>124</b>	<b>116</b>	<b>5%</b>
<b>Lincoln</b>	<b>531</b>	<b>398</b>	<b>28%</b>
<b>Lowell</b>	<b>642</b>	<b>653</b>	<b>-1.6%</b>
<b>Marshall</b>	<b>213</b>	<b>193</b>	<b>9%</b>
<b>McAteer</b>	<b>363</b>	<b>246</b>	<b>33%</b>
<b>Mission</b>	<b>306</b>	<b>162</b>	<b>45%</b>
<b>O'Connell</b>	<b>120</b>	<b>48</b>	<b>60%</b>
<b>School of the Arts</b>	<b>119</b>	<b>94</b>	<b>20%</b>
<b>Wallenberg</b>	<b>168</b>	<b>130</b>	<b>20%</b>
<b>Washington</b>	<b>699</b>	<b>505</b>	<b>27%</b>

<b>Percentage Approximate</b>	<b>29.3%</b>
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C. Miscellaneous Issues

1. The Grand Jury found that there was generally a feeling of fear and mistrust between the teachers and principals on the one hand and the superintendent and his staff on the other. Whenever a document was produced with the name of a teacher or principal on it, we were requested to redact the name before using the document. When asked why use this procedure, we were told that the superintendent and his staff were vindictive and may transfer the cooperating teacher or principal to an undesirable school or job as punishment for giving us the document.

The paranoia existed not only with the teachers and principals, but also with the Superintendent and his staff. It was very clear that there existed a party line with respect to the matters discussed above and that the Superintendent and his staff wanted the answers to our questions orchestrated according to what they wanted and not necessarily what was happening in the schools.

2. There was an allegation that the Chinese students were being discriminated against by the superintendent. There just wasn't enough time to thoroughly investigate this serious charge made by a responsible employee of the District.

3. It appeared that the District may not be in compliance with the State Board of Education's directives with respect to the District's language programs. In January of 1997, under Dr. Rosita Apodaca, the Language Academy was established. All bilingual and other language programs were administered through the Language Academy. In December of 1998 Dr. Apodaca sent the attached e-mail to all principals [Appendix B]. It was only in May 1999 at the end of the school year that the District conducted a workshop to explain LALAR and LPAAAC as well as other matters covered by the e-mail. Only one teacher had complied with the letter and this is because the teacher did it on her own. We were informed that as of the middle of May 1999 virtually no student was in compliance, except as noted.

4. There were no teachers who concurred with the Language School and its administrators that it should take between five to seven years for a child who spoke little or no English to master it sufficiently to be taught in it. With possible isolated exceptions we were told that a child should be able to learn English in one and a half to two years and that the five to seven year program was to ensure that the bilingual dollars flowed into the District as long as possible.

There are at least six (6) schools in the District where no English is spoken (3 Spanish, 2 Cantonese, 1 Filipino). The students purportedly are placed in these schools at their parents request and allegedly already speak, read and write English fluently. One questions if a child can learn Spanish by total immersion as well as all the other academic subjects he must learn, then why can't a child be immersed in an English speaking school and do the same? Clearly there is no economic incentive for this to happen, but there is for the reverse.

Because of time constraints we were unable to visit all the schools we would have liked. We did request to visit Galileo High School and were told we would have to make an appointment and that the Language Academy would get back to us. When we called back after not hearing from them, we were told it would not be possible for us to visit the school.

#### D. Recommendations

It is recommended that the next Grand Jury continue the study of the SFUSD's operations in the areas already commenced as well as the following:

1. Interview the District controller and chief financial officer.
2. Interview members of the School Board.
3. Analyze in depth the various statistics on language programs conducted by the District.
4. Look into the allegation that the District discriminates against Chinese students.
5. Review the consents of parents to have their children taught in a language other than English.
6. The SFUSD should keep track of the attrition rates as well as their presently defined dropout rates. The SFUSD should determine how many of the attritions between eleventh and twelfth grades are attending continuation high schools. These statistics would be useful in assessing the utility of the education they have received.
7. Determine what the requirements are for language programs being offered by the District, with the end in mind of determining if there is compliance.
8. The Grand Jury should be authorized to retain its own independent counsel. The excuse given by the City Attorney for not providing the Grand Jury with legal representation was that the City Attorney represents the District. This would apply to any legal issues raised by any other department of city government. The City Attorney purports to represent all of City and County Government. The stance taken by the City Attorney leaves the Grand Jury with no legal representation in its investigation of City and County Government.

9. The issue of social promotion and the use of the schools in summer rather than blindly promote, should be reviewed.

10. Visit at least a dozen additional schools including those that teach in a language other than English as well as those that teach partially in English.

11. Subpoena all SFUSD administrators to be interviewed instead of running the risk of failure to appear in response to an informal request.

### **RESPONSES REQUIRED**

Mayor

Superintendent of Schools

Board of Education

City Attorney

### **APPENDICES**

#### APPENDIX A

Letter Dated March 9, 1999, from Jay Martin to Gary Caine, Deloitte & Touche

#### APPENDIX B

December 15, 1998, E-Mail Transmittal from Dr. Rosita Apodaca to School Principals