



November 29, 2017

Bedford Central School District  
Board of Education  
632 South Bedford Road  
Bedford, NY 10506  
boe@bcsdny.org

Re: Recommendation of Superintendent Dr. Christopher M. Manno Pertaining  
to Dual Language Bilingual Education (DLBE) at Mount Kisco  
Elementary School (MKES)

Dear Bedford Central School District Board of Education,

We write on behalf of the Hudson Valley Justice Center (HVJC) to express this organization's agreement with the factual and legal findings presented by Bedford Central School District (BCSD) Superintendent Dr. Christopher M. Manno in the recently completed MKES Program Study 2017 ("Program Study"). HVJC also wholly supports the recommendation of Dr. Manno regarding the creation of a "school of choice" language academy at MKES or, in the alternative, the preservation of DLBE at MKES with the suggested addition of enhanced integration opportunities for children voluntarily enrolled in the traditional, English-only class. After an in-depth legal review of this issue, HVJC finds that the stated objectives and proposed structure of Dr. Manno's recommended plan clearly comport with Federal and State legal requirements governing educational services for English language learners (ELL's) and prohibitions against unlawful segregation. Moreover, it sets forth the most compelling vision and promising plan of action for directly advancing the goals expressed in the applicable statutes, regulations, and BCSD mission statement.

HVJC is a non-profit public interest law office, which aims to advance social and economic justice in the lower and mid-Hudson Valley region through legal advocacy, including direct legal services, policy analysis, and affirmative litigation. We partner with grassroots community organizations to identify unmet needs and provide free legal assistance to individuals and groups in a range of issue areas to support collective movements for change. For several months, at the request of local residents, HVJC has worked closely with parents of children enrolled in DLBE at MKES to understand their concerns relating to potential changes in the program and to identify and analyze the legal considerations arising from various possible actions by MKES and BCSD.



Foremost among the feelings expressed by these parents is the overwhelming superiority of DLBE to other, more segregated, forms of instruction for ELL's such as "pull out" services, which had stigmatized and less effectively served children in prior years at MKES. The additional benefits of DLBE for English-language dominant, Hispanic students at MKES has also been clearly identified by parents in Mount Kisco and corroborated by academic studies which show that such "heritage speakers" perform better in a bilingual, bicultural setting.<sup>1</sup> Finally, as the BCSD Board of Education ("the Board") has witnessed, there is broad-based support for DLBE among MKES parents across racial, ethnic, and linguistic lines, which reflects both the positive experience of students enrolled in the program and the perceived community benefits of such a culturally inclusive model.

Informed by these lived experiences of MKES parents and students, HVJC has analyzed the legal considerations relating to the Board's review of DLBE and the recommendations of Dr. Manno. This letter does not present a comprehensive statement of the requirements set forth in law pertaining to bilingual education, but rather points to the provisions we believe to be most pertinent to evaluation of Dr. Manno's recommendation and the above referenced parental concerns. The law does not mandate the provision of DLBE per se. However, the Board must understand that once a program such as DLBE has been implemented, any change in its operation may, in fact, implicate certain provisions of Federal and State law, including the Equal Educational Opportunities Act of 1974 and the Regulations of the Commissioner of the Education Department of New York State. Those implications, as relating to the rights of children at MKES and the responsibilities of BCSD, are addressed here.

### **Equal Educational Opportunities Act of 1974**

Congress enacted the Equal Educational Opportunities Act (EEOA) for the purpose of remedying discrimination and barriers to education for minority students, including language group minorities, within this country. The EEOA aims to accomplish this objective, in part, by legally obligating public schools and State educational agencies to affirmatively take steps to overcome language barriers which impede equal participation by students in their instructional programs. Section 1703(f) specifically states that failure of a public school to do so will constitute a violation of the statute. In *Castaneda v. Pickard*, the U.S. Court of Appeals for the Fifth Circuit set forth the criteria for determining whether a public school program complies with Section 1703(f). See *Castaneda v. Pickard*, 648 F.2d 989 (5th Cir. 1981). Applying the *Castaneda* standard in subsequent cases, courts consider whether: (1) a school system is pursuing a program "informed by an educational theory recognized as sound by some experts in the field or, at least, deemed a legitimate experimental strategy"; (2) the programs and practices actually used by a school system are reasonably calculated to implement effectively the educational theory adopted by the school; and (3) the program, once employed for a sufficient time period to give the plan a legitimate trial, produces "results indicating that the language barriers confronting students are actually being overcome." *Castaneda*, 648 F.2d at 1009-10.

The Program Study provides ample evidence that DLBE easily satisfies all three *Castaneda* requirements. DLBE is a thoroughly researched methodology, widely regarded as sound and

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<sup>1</sup> See Claude Goldenberg, *Teaching English Language Learners: What the Research Does--and Does Not--Say* (AFT: American Educator, Summer 2008); Jennifer Bonilla Moreno, *¿ONLY ENGLISH? HOW BILINGUAL EDUCATION CAN MITIGATE THE DAMAGE OF ENGLISH-ONLY*, Duke Journal of Gender Law & Policy, 20 Duke J. Gender L. & Pol'y 197.



effective by experts. In fact, multiple studies have concluded that: “(a) students in DLBE programs perform at or above grade level on standardized reading and mathematics tests in English; (b) they score similar to their statewide peers by about grades 5–7, if not sooner; (c) ELLs close the achievement gap with [native English speaking] students in English-only classrooms by about fifth grade; and (d) they achieve at or above grade level in reading (and math) tests measured in the partner language.”<sup>2</sup> Moreover, test results show that DLBE at MKES is indeed producing “results indicating that the language barriers confronting students are actually being overcome.” The Program Study indicates (a) the 2017 cohort in the DLBE program performed at or above prior cohorts not in DLBE, (b) DLBE has an observable positive impact on ELL performance in math, and (c) over a five-year period, the performance of ELLs and non-ELLs in the first cohort of DLBE has increased in mathematics. It is, therefore, clear that the EEOA obligations of MKES and BCSD would be satisfied by acceptance of Dr. Manno’s recommendation that DLBE be maintained and/or expanded. Furthermore, any reduction or elimination of DLBE would necessarily require the implementation of a different program to be scrutinized under the *Castaneda* standard.

The EEOA also addresses the legal duties and restrictions imposed on public schools in relation to segregation of students by race, color, sex, and national origin. In particular, Sections 1703(c) and (e) govern the implications of school assignments and voluntary transfers which impact on the level of segregation among schools within a single district. As opined by counsel for BCSD in their letter dated October 16, 2017, HVJC finds that Dr. Manno’s recommendation, which maintains the primacy of “choice” in enrollment, does not pose any significant risk of unlawful segregation. Moreover, the Board should note that the essence of DLBE is *integration* of students; the program model itself requires a balanced ratio of ELL’s and English language dominant students. Here again, any replacement of DLBE with more segregated “pull out” services for ELL’s would be subject to legal review and, at a minimum, likely result in a system less consistent with the stated goals of the EEOA.

### **Commissioner’s Rules Sub-Part 154**

The regulations of the New York State Commissioner of Education provide much of the relevant framework here. In particular, these regulations require that when a school district has 20 or more ELL’s in the same grade and who speak the same language at home, that school district “shall provide a sufficient number of Bilingual Education programs in the district . . . such that there are Bilingual Education programs available in the district for at least 70 percent of the estimated English Language Learners students who share the same home language other than English and grade level districtwide.” 8 N.Y.C.R.R. 154-2.3(d)(2). Moreover, when there are 20 or more ELL’s in the same grade at the same school whose home language is the same, the school district “shall provide such students with a Bilingual Education program at that school.” 8 N.Y.C.R.R. 154-2.3(d)(4).

As the Board is well aware, these requirements are triggered by the demographics of the student population in BCSD and at MKES. According to “Bedford by the Numbers,” a report put out by BCSD on January 10, 2017, there were over 20 ELL’s in the district in every grade except

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<sup>2</sup> Kathryn Lindholm-Leary, *Theory into Practice: Successes and Challenges in Dual Language Education* (Routledge 2012), p.257

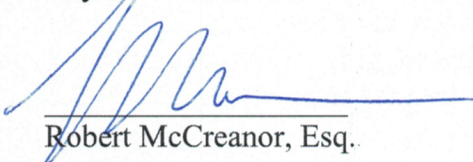


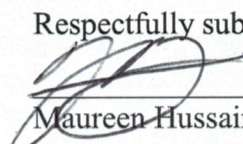
7<sup>th</sup> and 12<sup>th</sup> in the 2016-2017 school year. Moreover, at MKES, there were at least 20 ELL's in every elementary grade level. Consequently, BCSD is legally required to provide bilingual education at MKES for ELL students whose home language is Spanish. It is legally required to provide sufficient bilingual education programs, throughout the district, to serve at least 70% of the ELL's whose home language is Spanish.

By operating the DLBE, BCSD is already addressing its mandate with respect to ELL's in the MKES attendance zone. Notably, the school of choice would open this mode of bilingual education to ELL's – and other students – throughout the district, while providing program continuity to those students who are already enrolled. This is significant, because in addition to mandating the provision of bilingual education, New York State mandates that bilingual education be provided in a stable, continuing manner. The Commissioner's Regulations require that “[e]ach district shall provide program continuity such that all students designated as English Language Learners can continue to receive the program type (i.e., Bilingual Education or English as a New Language) in which they were initially enrolled, as long as the students remain designated as English Language Learners and, in the case of a Bilingual Education program, there were at least 15 students enrolled in a grade in such program in the district the prior school year.” 8 N.Y.C.R.R. 154-2.3(e). Dr. Manno stated that the frequent reexamination of the DLBE program was a prominent concern among the parents who attended the focus groups during the Program Study. Not only is it a practical and financial concern for parents, students, teachers, administrators, and taxpayers, but it is also a legal concern for the school district. BCSD is legally required to provide continuity for its bilingual education programs. While the district certainly can and should evaluate its programs for effectiveness and be open to changes should circumstances dictate, bilingual education at MKES cannot be on the chopping block, now or in the foreseeable future; discontinuing or fundamentally changing the existing bilingual program could expose the district to potential liability for failing to steward the school district in accordance with its legal obligations to all students.

Finally, the Board must be absolutely clear that, within the above described legal framework, certain concerns that have been raised by members of the community, such as the speculative effects of various curriculum choices on property values in the district, must fall by the wayside. Dr. Manno's recommendation to the Board – that DLBE continue at MKES and expand to a school of choice for the rest of the district – honors BCSD's obligations to provide bilingual education to English language learners, to provide continuity for students once they are enrolled in a bilingual program, and to eliminate discrimination and barriers to education for minority students. That it does so while expanding educational opportunities for all students throughout the district *and* accommodating the preferences of the small minority of Mount Kisco families who prefer for their children not to participate in DLBE, is commendable.

HVJC fully endorses Dr. Manno's recommendation and urges the Board to adopt it.

  
Robert McCreanor, Esq.

Respectfully submitted,  
  
Maureen Hussain, Esq.

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