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## Martin Luther King Junior Elementary School Children v. Michigan Board of Education: Extension of EEOA Protection to Black-English-Speaking Students

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**MARTIN LUTHER KING JUNIOR ELEMENTARY SCHOOL  
CHILDREN v. MICHIGAN BOARD OF EDUCATION:  
EXTENSION OF EEOA PROTECTION TO BLACK-  
ENGLISH-SPEAKING STUDENTS**

The ability to read, write, and speak standard English<sup>1</sup> is essential to economic and social mobility in American society.<sup>2</sup> Researchers have found, however, that many language-minority children do not communicate effectively in standard English to the extent necessary to compete successfully in the job market.<sup>3</sup> Part of the problem, according to the researchers, is the failure of public schools to account for the students' language deficiency in teaching them to read. As a result, these students in effect are required to learn English through the use of English instruction as if it were their native language.<sup>4</sup>

Congress attempted to remedy this problem when it passed the Equal Education Opportunities Act of 1974 (EEOA).<sup>5</sup> Under section 1703(f) of the Act, the failure of an educational agency to take appropriate action to overcome the language barriers encountered by these students is a denial of equal educational opportunity.<sup>6</sup> Section 1706 provides for a private right of action for any individual denied equal educational opportunity and empowers federal

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1. The label "standard," according to linguists, does not connote that this form of English is better than any of the dialects spoken across the country. See Lloyd, *Snobs, Slobs and the English Language*, in LANGUAGE AND CULTURAL DIVERSITY IN AMERICAN EDUCATION 117 (1972). Some linguists view standard English as a rather arbitrarily selected abstraction that serves the peculiar needs of the intellect. *Id.* at 123. Others use the term to refer to the version of English spoken by well-educated middle-class Americans. See van Geel, *The Right to be Taught Standard English: Exploring the Implications of Lau v. Nichols for Black Americans*, 25 SYRACUSE L. REV. 863, 863 n.2 (1974).

2. STAFF OF SENATE SELECT COMM. ON EQUAL EDUC. OPPORTUNITY, 92D CONG., 2D SESS., TOWARD EQUAL EDUC. OPPORTUNITY 4 (Comm. Print 1972).

3. Van Geel, *supra* note 1, at 863.

4. *Id.* at 864 n.4.

5. Pub. L. No. 93-380, 88 Stat. 514 (codified at 20 U.S.C. §§ 1701-1718, 1720-1721, 1751-1758 (Supp. V 1975)) (amending the Elementary and Secondary Education Act of 1965).

6. "No state shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs." 20 U.S.C. § 1703(f) (Supp. V 1975).

district courts to fashion appropriate relief.<sup>7</sup>

Although non-English-speaking children are the more obvious beneficiaries of the EEOA, linguistic researchers have shown that many black children face similar problems.<sup>8</sup> The linguists contend that many black children speak a dialect<sup>9</sup> in their homes that is grammatically distinct from standard English.<sup>10</sup> Like their non-English-speaking counterparts, children who speak the dialect known as "black English"<sup>11</sup> also must learn to read standard English through the use of standard English instruction as if it were their native language.<sup>12</sup> The United States District Court for the Eastern District of Michigan considered whether the EEOA addresses these problems in *Martin Luther King Junior Elementary School Children v. Michigan Board of Education*<sup>13</sup> and held that section 1703(f) can apply to language barriers encountered by students who speak black English.<sup>14</sup>

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7. *Id.* § 1706.

8. Van Geel, *supra* note 1, at 888.

9. "Dialect" is defined as "a specific collection of linguistic features—lexical, phonological, and grammatical—associated with a particular social class, race, or region." *Id.* at 863.

10. *Id.* at 888.

11. "Black English" is used by linguists to identify a version of English spoken by many black Americans in casual and informal conversation. *Martin Luther King Junior Elem. School Children v. Ann Arbor School Dist.*, 473 F Supp. 1371, 1376 (E.D. Mich. 1979). The language originated in the pidgin language of the slaves, became a Creole language after several generations, and then was refined and brought closer to the version of English spoken by the mainstream of American society. *Id.* at 1375.

Linguists use the term to contrast the language with standard English. Thus, the equivalent of "My mother is here now" in black English would be "My mother, she's here now." See van Geel, *supra* note 1, at 910. Other grammatical features of black English include the omission of "have," as in "I been here for hours," and the use of "ain't" and double negatives. *Id.* Phonological features include "r-lessness" as in "Pass" for "Paris" and the weakening of final consonants as in "row" for "road." *Id.*

12. Van Geel, *supra* note 1, at 888.

13. 451 F Supp. 1324 (E.D. Mich. 1978). The court later dismissed the Michigan Superintendent of Public Instruction and his employees, agents, and assigns in their official capacities, and the Michigan Board of Education from the suit at the request of the plaintiffs. *Martin Luther King Junior Elem. School Children v. Ann Arbor School Dist.*, 473 F Supp. 1371, 1373 (E.D. Mich. 1979).

14. 451 F Supp. at 1332. The plaintiffs in *Martin Luther King* also alleged that the school board had violated their equal protection rights under the fourteenth amendment by failing to provide them with special education services to overcome their unsatisfactory academic performance. *Id.* at 1327. The court, however, rejected this constitutional theory, noting that education is not a fundamental right and that the plaintiffs, culturally, socially, and economically deprived students, did not constitute a suspect class. *Id.* at 1327-29.

The plaintiffs in *Martin Luther King* were fifteen preschool and elementary school children who spoke black English in their homes and community at the Green Road Housing Development, a low-income housing project.<sup>15</sup> The students experienced difficulties in learning to read even though the teachers at King School had no problems understanding the students.<sup>16</sup> The court found that the teachers used textbooks prepared by well-regarded educators,<sup>17</sup> and each of the plaintiff students received special help to improve their reading skills.<sup>18</sup> The court found, however, that the teachers did not account for the students' home language in teaching them to read.<sup>19</sup> It thus concluded that the school board violated section 1703(f) by failing to develop a program to aid the teachers in recognizing the students' home language<sup>20</sup> and ordered the school district to institute a program to accommodate the needs of the black-English-speaking school children.<sup>21</sup>

*Martin Luther King* represents the first application of the mandate of section 1703(f) to barriers other than those imposed by foreign languages. This Comment will analyze the validity of the

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The plaintiffs' claims based upon section 2000d of the Civil Rights Act of 1964 fared no better. The court dismissed the claim because of failure to allege that benefits were denied on the basis of race, color, or creed. *Id.* at 1335.

15. 473 F Supp. at 1373.

16. *Id.* at 1379.

17. *Id.*

18. *Id.* at 1380.

19. *Id.* at 1379.

20. *Id.* at 1383. The plaintiffs in *Martin Luther King* originally alleged that the school board violated section 1703(f) by failing to determine whether their learning difficulties stemmed from cultural, social, or economic deprivation and by failing to establish a program to enable the students to overcome these deprivations. 451 F Supp. at 1326. In a second memorandum opinion, Judge Joiner instructed the plaintiffs to amend their complaint by identifying their language barriers, omitting references to cultural and economic characteristics, setting forth the appropriate action the defendant allegedly failed to take, and identifying the connection between the defendant's failure to take appropriate action and a classifying criterion of race, color, sex, or national origin. See *Martin Luther King Junior Elem. School Children v. Michigan Bd. of Educ.*, 463 F Supp. 1027, 1030-32 (E.D. Mich. 1978).

21. 473 F. Supp. at 1383. The plan proposed by the school board and accepted by the court has two basic components: a 20 hour in-service program designed to give the teachers a background in general dialect and language concepts, including the contrasting features of black and standard English, the identification of black English speakers, and the use of the resulting awareness of dialect difference to help the students to learn to read standard English; and a classroom reinforcement and implementation component providing follow-up seminars and the services of a full-time Language Arts consultant. *Id.* at 1385-87.

court's holding and will consider its ramifications for future demands for special black-English programs. It also will consider the problems other courts may have in dealing with an issue on which educators themselves cannot agree—whether black English interferes with the ability of children to learn to read. The Comment concludes, that the district court's liberal reading of section 1703(f) is plausible and consistent with the prior case law in that the ultimate goal remains that of teaching American school children to read, write, and speak standard English.

### STATUTORY BASIS

#### *Legislative History*

The genesis of the EEOA, including section 1703(f), is apparent in a message from President Nixon to Congress in 1972.<sup>22</sup> In that speech, the President proposed legislation that would require school authorities to take appropriate action to overcome whatever language barriers exist in order to enable all students to participate equally in educational programs.<sup>23</sup> In 1972 the House of Representatives passed an amendment that was identical in many respects to the EEOA, but the legislation was defeated in the Senate.<sup>24</sup>

In 1974, however, Congress enacted section 1703(f),<sup>25</sup> apparently in response to the Supreme Court's decision in *Lau v. Nichols*.<sup>26</sup> In *Lau*, 1800 Chinese-speaking students brought suit to compel the San Francisco Unified School District to provide special instruction in English.<sup>27</sup> The Supreme Court granted relief based upon the Civil Rights Act of 1964,<sup>28</sup> which prohibits the denial of benefits of federally assisted programs on grounds of race, color, or na-

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22. 118 CONG. REC. 8928-34 (1972).

23. *Id.* at 8931.

24. *Martin Luther King Junior Elem. School Children v. Michigan Bd. of Educ.*, 451 F Supp. at 1330 n.3.

25. *See Cintron v. Brentwood Union Free School Dist.*, 455 F Supp. 57, 62 (E.D.N.Y. 1978). *See also* 17 DUQ. L. REV. 473, 482 (1978).

26. 414 U.S. 563 (1974).

27. *Id.* at 564.

28. "No person shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d (1970).

tional origin.

Noting that fluency in English was a prerequisite to high school graduation in California, the Court reasoned that non-English-speaking students do not receive equal treatment when the school merely provides them with the same facilities, textbooks, teachers, and curriculum as those available to English-speaking students.<sup>29</sup> This approach, the Court concluded, effectively foreclosed non-English-speaking students from obtaining a meaningful education.<sup>30</sup>

The Court also relied on regulations issued by the Department of Health, Education and Welfare (HEW) in 1968 pursuant to HEW's authority under the Civil Rights Act of 1964,<sup>31</sup> which specified that school systems receiving federal funds could not provide a benefit to one person in a manner different from that provided to others in the system.<sup>32</sup> These regulations also provided that recipients could not use criteria that had the effect of subjecting individuals to discrimination or of defeating the objectives of the program with respect to individuals of a particular race, color, or national origin.<sup>33</sup> Clarifying regulations issued by HEW in 1970 directed local school boards to take affirmative steps to rectify language deficiencies in order to open instructional programs to national origin minority-group children.<sup>34</sup> School boards also were forbidden to operate bilingual programs as educational "dead ends" or "permanent tracks."<sup>35</sup> Based upon the provisions of the Civil Rights Act and the HEW regulations, the Court concluded that the Chinese students were entitled to receive compensatory language instruction.<sup>36</sup>

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29. 414 U.S. at 566.

30. *Id.*

31. 42 U.S.C. § 2000d-1 (Supp. V 1975).

32. 414 U.S. at 567 (quoting 45 C.F.R. § 80.3(b)(1)(ii) (1973)).

33. 414 U.S. at 568 (quoting 45 C.F.R. § 80.3(b)(2) (1973)).

34. 35 Fed. Reg. 11,595-96 (1970).

35. *Id.* at 11,595.

36. *Id.* In his concurring opinion in *Lau v. Nichols*, Justice Blackmun indicated that he would qualify the Court's holding to apply only in cases involving a substantial number of minority children. 414 U.S. at 572 (Blackmun, J., concurring). Some post-*Lau* cases have adopted Blackmun's requirement of "substantial numbers." See, e.g., *Serna v. Portales Mun. Schools*, 499 F.2d 1147 (10th Cir. 1974); *Otero v. Mesa County Valley School Dist. No. 51*, 408 F. Supp. 162 (D. Colo. 1975), *vacated on other grounds*, 568 F.2d 1312 (10th Cir. 1977). See also Note, *Bilingual Education—A Problem of "Substantial" Numbers?*, 5 *FORDHAM URB. L.J.* 561 (1977).

Section 1703(f) essentially codified the holding in *Lau*, but extended its application to all public schools, not just those receiving federal funds. In a committee report on the EEOA, the Committee on Education and Labor noted that the landmark decision in *Lau* would have "far reaching ramifications for all of the school systems serving children whose native tongue is other than English."<sup>37</sup>

Beyond this, however, the committee report says little about *Lau* or section 1703(f), in part because the EEOA was proposed as an amendment from the floor of each house<sup>38</sup> and enacted into law after only minor modifications in the Senate.<sup>39</sup> Consequently, no committee hearings were held concerning the EEOA during the Ninety-third Congress. The legislative history of the EEOA from 1974 therefore provides little, if any, insight into the congressional purpose in enacting section 1703(f).

Thus, in interpreting this section, the court in *Martin Luther King* could rely only upon the section's wording and the legislative history of the EEOA proposed in 1972.<sup>40</sup> First, the section itself contains no specific reference to foreign language barriers.<sup>41</sup> The only limitation evident in the statutory language is that requiring a language barrier sufficiently severe to impede equal participation by students in instructional programs.<sup>42</sup> The court in *Martin Luther King* reasoned that, barring more specific legislative guidance, section 1703(f) could apply to language barriers encountered by students who speak black English as well as those facing students

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37. H.R. REP. No. 805, 93d Cong., 2d Sess., reprinted in [1974] U.S. CODE CONG. & AD. NEWS 4093, 4151.

38. Debate in the House of Representatives over passage of the EEOA mainly concerned whether the Act was "anti-busing" or simply specified a set of alternatives to busing in order to achieve equal educational opportunity. See 120 CONG. REC. 8264-81 (1974). The Act permits a court to order busing only if the court finds that all alternative remedies are inadequate. See 20 U.S.C. § 1755 (Supp. V 1975). Accordingly, the Act enumerates appropriate alternative remedies designed to eliminate the dual school system, *id.* §§ 1712-1717, in order to establish "a clear, rational and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in order to eliminate the vestiges of a dual school system." *Id.* § 1702(a)(6). The priority of remedies ranges from assigning students to schools closest to their homes to the construction and establishment of magnet schools. See *id.* § 1713.

39. H.R. REP. No. 805, 93d Cong., 2d Sess., reprinted in [1974] U.S. CODE CONG. & AD. NEWS 4093, 4206.

40. 451 F Supp. at 1330, 1332.

41. See note 6 *supra*.

42. 451 F Supp. at 1332.

who speak a foreign language as their home or primary language.<sup>43</sup>

To buttress its reasoning, the court quoted from President Nixon's message to Congress in 1972 calling upon school authorities to "take appropriate action to overcome *whatever* language barriers might exist."<sup>44</sup> The term "whatever" supports the court's interpretation of section 1703(f); Nixon did not refer specifically to foreign language barriers. He also stated that enactment of the legislation "would establish, in effect, an educational bill of rights for Mexican-Americans, Puerto Ricans, Indians, and others who start under language handicaps, and ensure at last that they too would have equal opportunity."<sup>45</sup> Based upon this language, the court concluded that the President's list not only was merely illustrative, but also could include students whose language barriers result from the use of some type of nonstandard English.<sup>46</sup>

Although black-English-speaking students could qualify as "others who start under language handicaps," the issue is not what might be included under the President's list, but whether Congress intended to remedy the type of language barrier experienced by the black students at the King School. The congressional debate over passage of the EEOA in 1974, however, does not contain references even to foreign language barriers,<sup>47</sup> and the legislative history does not provide a more specific or limited meaning than the language of the statute. The question of whether Congress intended the mandate of section 1703(f) to apply only to foreign language barriers thus is left unanswered, and the next source for insight must be the courts.

### *Judicial Response*

Although the case law has established the right of students who speak a foreign language to receive bilingual instruction,<sup>48</sup> the

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43. *Id.*

44. *Id.* (emphasis original) (quoting 118 CONG. REC. 8931 (1972)).

45. *Id.*

46. *Id.*

47. See 120 CONG. REC. 8264-81 (1972).

48. *Guadalupe Org., Inc. v. Tempe Elem. School Dist.* No. 3, 587 F.2d 1022 (9th Cir. 1978); *Deerfield Hutterian Ass'n v. Ipswich Bd. of Educ.*, 468 F Supp. 1219 (D.S.D. 1979); *Cintron v. Brentwood Union Free School Dist.*, 455 F Supp. 57 (E.D.N.Y. 1978).

Bilingual education, as defined by the United States Office of Education, consists of "in-



courts have not addressed whether section 1703(f) guarantees similar accommodation for differences in dialect. In *Cintron v. Brentwood Union Free School District*,<sup>49</sup> however, the United States District Court for the Eastern District of New York characterized both section 1703(a) and the Supreme Court's decision in *Lau* as defining only the rights of non-English-speaking children.<sup>50</sup> Thus, under the interpretation of the court in *Cintron*, section 1703(f) might not extend to the children at the King School. This question, though, was not at issue in *Cintron*; therefore, the court's assertion on this point is dictum and not controlling.

The court in *Martin Luther King* distinguished *Cintron* because the plaintiffs in that case sought effective bilingual education. The plaintiffs in *Martin Luther King*, the court noted, did not assert a right to receive instruction in black English, demand that substantive courses be taught in black English, or ask that the school provide dual instruction in both standard and black English.<sup>51</sup> Instead, the plaintiffs in *Martin Luther King* wanted the school to

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struction in two languages and the use of those two languages as mediums of instruction for any part or all of the school curriculum. Study of the history and culture associated with a student's mother tongue is considered an integral part of bilingual education." *Guadalupe Org., Inc. v. Tempe Elem. School Dist. No. 3*, 587 F.2d 1022, 1025 n.1 (9th Cir. 1978) (quoting U.S. OFFICE OF EDUCATION, DRAFT GUIDELINES TO THE BILINGUAL EDUCATION PROGRAM, reprinted in T. ANDERSON & M. MOYER, BILINGUAL SCHOOLING IN THE UNITED STATES app. (1970)). The Bilingual Education Act of 1974 authorizes appropriations to local and state educational agencies to encourage and establish bilingual educational programs for children of limited English-speaking ability. 20 U.S.C. § 880b (Supp. V 1975). The Act defines children of "limited English-speaking ability" as "(A) individuals who were not born in the United States or whose native language is a language other than English, and (B) individuals who come from environments where a language other than English is dominant, as further defined by the Commissioner by regulations." *Id.* § 880b-1(a)(1). Regulations promulgated by the Department of Health, Education, and Welfare pursuant to the Bilingual Education Act of 1974 have defined "dominant language" as "the language most relied on for communication in the home." See 45 C.F.R. § 123.02(a) (1979).

The United States Office of Education estimated in 1975 that at least five million children needed remedial English Language programs. U.S. COMM'N ON CIVIL RIGHTS, A BETTER CHANCE TO LEARN: BILINGUAL BICULTURAL EDUCATION 13 (1975). For an overview of the legal status of bilingual education see Note, *The Constitutional Right of Bilingual Children to an Equal Educational Opportunity*, 47 at S. CAL. L. REV. 943 (1974) (arguing that non-English-speaking children have a constitutional right to receive bilingual education); 17 DUQ. L. REV. 473, 473 (1978). See generally 13 HARV. C.R.-C.L. L. REV. 133, 146-60 (1978).

49. 455 F Supp. 57 (E.D.N.Y. 1978).

50. *Id.* at 62-63.

51. 473 F Supp. at 1373.

identify children who speak black English and require the teachers to account for their dialect when teaching those students how to read.<sup>52</sup>

The students thus sought mere accommodation for their black-English background. The court in *Martin Luther King* concluded that the mandate of section 1703(f) applied because the language barrier encountered by the students was sufficiently severe to impede their equal participation in instructional programs. Acknowledging the significance of this barrier, the court noted that "a child who does not learn to read is impeded in equal participation in the educational programs. Such a child cannot fully participate in the educational programs which to a significant degree require the student to acquire knowledge from the written word."<sup>53</sup>

### SOCIOLINGUISTIC BASIS

Implicit in the court's analysis of the situation at the King School is the notion that students who speak black English face problems similar to those experienced by non-English-speaking students. For the native speaker, the process of learning to read is not learning a new language code or new grammatical structures; these are all matters of the language that he already has internalized and uses without conscious thought.<sup>54</sup> When a non-English-speaking student attempts to learn to read English, however, he must switch from his native language to English.<sup>55</sup> Similarly, a student who speaks black English must "code switch" from black English to standard English.<sup>56</sup>

Linguistic researchers argue that non-English-speaking students also face a psychological problem when they learn to read English.<sup>57</sup> They contend that the rejection of a child's native language

52. *Id.* at 1378.

53. *Id.* at 1377.

54. Jagger & Cullinan, *Relating Reading to Language in Initial Reading Instruction*, in *BLACK DIALECTS IN READING* 14, 15 (B. Cullinan ed. 1974).

55. See Saville, *Language and the Disadvantaged*, in *LANGUAGE AND CULTURAL DIVERSITY IN AMERICAN EDUCATION* 310 (1972) for a linguistic analysis of the problems non-English-speaking students face.

56. *Martin Luther King Junior Elem. School Children v. Ann Arbor School Dist.*, 473 F Supp. at 1376.

57. See Note, *supra* note 36, at 562-63.

and customs in an attempt to teach him standard English could result in psychological trauma by causing feelings of inferiority<sup>58</sup> In *Serna v. Portales Municipal Schools*,<sup>59</sup> the Court of Appeals for the Tenth Circuit recognized this psychological problem and noted that when the

children come to school and find that their language and culture are totally rejected and that only English is acceptable, feelings of inadequacy and lowered self esteem develop They are frustrated and they express their frustration in lack of attendance [and] lack of school involvement Their frustrations are reflected in hostile behavior and eventually dropping out of school.<sup>60</sup>

Some linguists contend that black-English-speaking children face similar psychological hardships.<sup>61</sup> The black child, like his non-English-speaking counterpart, becomes alienated from the teacher and from the teacher's culture.<sup>62</sup> The court in *Martin Luther King* concluded that the black child faces an even more serious psychological problem because, as linguists suggest, many teachers consider black English an inferior language system.<sup>63</sup>

The court relied heavily on the linguists and educators who testified regarding the existence of black English and its impact on the ability of black students to learn to read standard English.<sup>64</sup> The linguists agreed that black English is a definite language system, with coherent rules of pronunciation and grammar,<sup>65</sup> and not the product of mistakes, laziness, or cultural deficiency<sup>66</sup> They admitted that black English is a dialect of only a segment of the black population,<sup>67</sup> used mostly in informal or casual conversa-

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58. *Id.*

59. 499 F.2d 1147 (10th Cir. 1974).

60. *Id.* at 1150.

61. See generally van Geel, *supra* note 1, at 894-95.

62. *Id.*

63. 473 F Supp. at 1376.

64. For a list of the linguists and educators who testified, see *id.* at 1375 n.3.

65. See note 11 *supra*.

66. *Id.*

67. Linguists have found that the linguistic features of black English correlate most strongly with certain subgroups of black population such as southern-rural and inner-city blacks. Van Geel, *supra* note 1, at 891 n.81.

tion.<sup>68</sup> Also, the linguists pointed out that many blacks who speak the dialect are capable of speaking standard English outside of the black community.<sup>69</sup>

Linguists generally disagree on whether more similarities than differences exist between black and standard English,<sup>70</sup> and disagree to an even greater extent as to whether black English really interferes with a black child's ability to learn to read.<sup>71</sup> For instance, some scholars contend that black children come to school with a language deficiency that results from insufficient verbal stimulation in early childhood.<sup>72</sup> No solid evidence points to one theory as the most accurate.<sup>73</sup>

Although the court in *Martin Luther King* made no attempt to reconcile the conflicting linguistic theories, it concluded that the difference between black and standard English is not a language barrier in and of itself.<sup>74</sup> Thus, it skirted the question of whether black English will be a language barrier in every case. The court, however, concluded that black English became a language barrier when the teachers at the King School did not account for the dialect in teaching the students to read.<sup>75</sup> The students thus were required to switch from black English to standard English with no acknowledgment of the change.<sup>76</sup> Therefore, the remedy ordered by the court was directed toward assisting the teachers in learning about black English and applying that knowledge in the classroom.<sup>77</sup>

### IMPLICATIONS

Although the court in *Martin Luther King* distinguished the facts presented from cases such as *Cintron* that involved demands for effective bilingual education, another court confronted by a dif-

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68. 473 F Supp. at 1376.

69. *Id.*

70. Van Geel, *supra* note 1, at 891.

71. For a discussion of the various theories, see *id.* at 893-95.

72. *See id.* at 889.

73. *Id.* at 893.

74. 473 F Supp. at 1383.

75. *Id.* at 1382.

76. *Id.* at 1383.

77. *Id.*

ferent set of facts might conclude that black English is a language barrier in and of itself. For example, if a court found that teachers had serious problems understanding students who spoke black English and that the students in turn had difficulties understanding standard English, it might order a school district to provide instruction in both black and standard English. Some linguists have proposed second dialect programs as one method of teaching black children to read.<sup>78</sup> Thus, although the court in *Martin Luther King* confined its holding to the particular situation at the King School, it possibly could lead to demands for dual dialect programs.

Alternatively, a court could conclude that the students' reading problems were caused not by a language barrier, but by other factors such as lack of attendance. The court in *Martin Luther King* in fact noted that the evidence suggested other causes for the plaintiffs' poor performance in school, such as absences from class, learning disabilities, and emotional impairment.<sup>79</sup> Application of section 1703(f) thus would turn on whether the sociolinguistic evidence outweighed the evidence, if any, of other causes.

Also, a court simply could conclude that the asserted language barrier was not sufficiently severe to trigger application of section 1703(f). In this respect, the approach taken by the court in *Martin Luther King* requires a court to determine initially whether the alleged language barrier is sufficiently "severe" for the purposes of section 1703(f), whereas in a case involving non-English-speaking students, the court's role is clear-cut: the court need only consider whether a school district has taken "appropriate action," because by definition, non-English-speaking students face considerable, if not grave, language barriers in learning to read English.

### *The Role of the Courts Under Section 1703(f)*

Although the court in *Martin Luther King* claimed that it was not making pedagogical judgments,<sup>80</sup> it ultimately became an arbiter of linguistic theories in deciding whether black English is a lan-

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78. See Troike, *Receptive Bidialectalism: Implications for Second-Dialect Teaching*, in LANGUAGE AND CULTURAL DIVERSITY IN AMERICAN EDUCATION 305 (1972).

79. 473 F Supp. at 1380.

80. *Id.* at 1382-83.

guage barrier for the purposes of section 1703(f). Yet, the court readily admitted that courts should not become arbiters of educational policy.

The exact role that Congress intended for the federal courts in applying the EEOA is difficult to ascertain. The Act states that Congress sought to provide the courts with "appropriate remedies for the elimination of the vestiges of dual school systems."<sup>81</sup> Also, President Nixon proposed the EEOA to provide the courts with a new and broader base on which to decide future cases.<sup>82</sup> Although this language is very general, it suggests that under the EEOA, the courts should play a larger role than they previously did in ensuring equal educational opportunity. The court in *Martin Luther King* noted that "full integration and equal opportunity require much more [than reliance on simplistic devices such as busing]."<sup>83</sup> One matter requiring more attention, according to the court, is teaching black children to read standard English.<sup>84</sup> To this extent, the court carried out the congressional purpose behind the EEOA of ensuring equal educational opportunity for all students.

Also, the court in *Martin Luther King* stressed that a major goal of American education is to teach students to read *standard* English.<sup>85</sup> In *Lau*, the Supreme Court noted that basic language skills constitute the core of public school education.<sup>86</sup> The court's application of section 1703(f) in *Martin Luther King* thus was an attempt to ameliorate the "problem of why 'Johnny can't read' when Johnny is black and comes from a scatter low income housing unit."<sup>87</sup> To this extent, the court's holding is consistent with *Lau* and bilingual cases such as *Cintron* that have construed section 1703(f).

The court's response to the problems of the students at the King School was both sensitive and pragmatic. It characterized the case as a "cry for judicial help in opening the doors to the establish-

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81. 20 U.S.C. § 1702(a)(6) (Supp. V 1975).

82. 118 CONG. REC. 8930-31 (1972).

83. 473 F Supp. at 1381.

84. *Id.*

85. *Id.* at 1372.

86. 414 U.S. at 566.

87. 473 F Supp. at 1381.

ment"<sup>88</sup> and hoped the decision would be a step toward preventing another generation from becoming functionally illiterate.<sup>89</sup>

### CONCLUSION

In *Martin Luther King*, the court presented a well-reasoned argument for application of the EEOA to the problems encountered by the students at the King School. The statutory language places no limit on the source of the language barrier; section 1703(f) simply refers to "language barriers," not "foreign language barriers." The court thus was justified in extending application of section 1703(f) beyond foreign language barriers.

The legislative history gives little insight into the exact congressional purpose behind section 1703(f). The committee reports from 1974 mention the section only briefly. The reports, however, do not suggest that application of section 1703(f) should be limited to remedying foreign language barriers. The broad language in President Nixon's message to Congress in 1972, when the EEOA first was proposed, lends additional support to the court's holding. The holding thus was consistent with the available legislative history.

Similarly, the case history of the EEOA does not suggest that section 1703(f) applies only to foreign language barriers. Although the court in *Cintron* characterized the provision as guaranteeing a non-English-speaking child's right to bilingual education, this language was dictum. Also, the court distinguished *Martin Luther King* from bilingual cases such as *Cintron*. The holding in *Martin Luther King* simply required accommodation for the students' home dialect. Moreover, despite its liberal reading of the Act, the court's approach was consistent with the bilingual cases to the extent that the ultimate goal remains that of teaching American school children to read, write, and speak standard English.

The court relied heavily on the sociolinguistic evidence that suggested that black children face problems similar to those experienced by non-English-speaking children. Although it made no attempt to reconcile the conflicting linguistic theories and admitted that courts should not become involved in deciding educational issues, the court ultimately became an arbiter of educational policy

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88. *Id.* at 1373.

89. *Id.* at 1391.

by deciding whether black English is a language barrier to students who attempt to learn to read standard English. Whether Congress intended the courts to undertake such a role is unclear, but language from the Act and from President Nixon's speech justify the broad role taken by the court in *Martin Luther King*.

Other courts may have difficulty dealing with this issue because the approach taken by the court in *Martin Luther King* requires a court to consider not only whether the language barrier is sufficiently severe to impede a child's equal participation in school, but also whether the child's poor performance is explained by other factors such as lack of attendance. These questions do not arise in cases involving demands for bilingual education. The court in *Martin Luther King*, however, recognized that a child who does not learn to read is impeded seriously in equal participation in educational programs. Thus, if the reading problem can be explained by the use of black-English in the home setting, a school should account for the existence of the home language when teaching those students to read.

Although the court strictly limited its holding to its facts, the decision established a precedent for future applications of section 1703(f) to non-foreign language barriers. The decision thus could have far-reaching implications for future demands for special programs related to black English.