

## Improving Assessment and Accountability for English Language Learners in the No Child Left Behind Act

By Melissa Lazarín\*

### OVERVIEW

**I**n 2003, Latinos\*\* accounted for more than 8.8 million students in U.S. K-12 public schools, or 19% of total school enrollment, making them the second-largest segment of the U.S. student population after White students.<sup>1</sup> Immigrant and English language learner (ELL), or limited-English-proficient (LEP),\*\*\* students are a significant part of the Latino student population. Of the estimated five million ELL students who were enrolled in our nation's schools in the 2003-2004 academic year, more than three-fourths (79%) were native Spanish speakers.<sup>2</sup> In fact, nearly half (45%) of all Latino public school children are ELLs.<sup>3</sup> Thus, Latino student outcomes are intrinsically tied to ELL student achievement.

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\*\* The terms "Hispanic" and "Latino" are used interchangeably to identify persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race.

\*\*\* The terms "English language learners" and "limited-English-proficient" are used interchangeably to identify persons whose native language is one other than English and whose difficulties in speaking, reading, writing, or understanding the English language may hinder the individual from the ability to achieve academically in classrooms where the language of instruction is English.

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More importantly, given the growth of Latinos and ELLs in our nation's schools, overall student achievement in U.S. schools will increasingly depend on how these groups fare academically. ELLs represent 10.3% of public school enrollment<sup>4</sup> and are concentrated in large, urban school districts; a quarter of the 100 largest school districts have an ELL population of at least 15%.<sup>5</sup> While most of these districts are located in "traditional" Latino and immigrant states such as California and Texas, states that witnessed the largest percentage growth of ELLs between 1994 and 2004 include "nontraditional" Latino and immigrant states such as South Carolina (526%), North Carolina (471%), Tennessee (448%), and Indiana (438%).<sup>6</sup> Therefore, for the nation's public school system overall to be successful, student achievement and graduation rates for Latinos, *as well as* ELLs, must improve in every region of the country.

Unfortunately, educational achievement and attainment gaps between Latinos and other U.S. students remain wide. The gaps are even larger with respect to ELL children and their White and African American counterparts. For example, in the 2005 National Assessment of Educational Progress (NAEP), also known as the Nation's Report Card, 29% of eighth-grade ELLs scored at or above the basic achievement level in reading, compared to 75% of non-ELLs. Similar gaps were demonstrated in mathematics.<sup>7</sup> These gaps are also evident at the state level. In Texas, in the 2001-2002 school year, ELLs in grades 7-12 were retained in grade at twice the rate of English-proficient students (13% compared to 6.5%, respectively) and dropped out of school at a rate of 77% greater than non-ELLs.<sup>8</sup>

The No Child Left Behind Act (NCLB), which reauthorized the Elementary and Secondary

Education Act (ESEA), provides opportunities to narrow these gaps by holding schools accountable for improving academic achievement among all groups, including Latino and ELL students. Although previous iterations of the federal education law required the inclusion of all students in state accountability systems, they contained no requirements to close the achievement gap specifically for ELLs, nor did they require disaggregation of achievement data to help parents hold the school system accountable for closing the gap. Moreover, there was little enforcement of these provisions. As a result, Latino and ELL students, along with students with disabilities, were among the most vulnerable to "gaming" of the system.<sup>9</sup> That is, the school system could mask the low achievement of Latino and ELL students by reporting aggregate achievement results. Thus, ELLs were among the most likely students to be exempted from state accountability systems. For example, in the 1998-1999 school year, testing and accountability policies in at least 46 states allowed some opportunity for exemption of ELLs.<sup>10</sup>

In addition, distortion of dropout and pushout rates helped to artificially inflate test scores and misrepresent student outcomes, as was the case with the Houston Independent School District.<sup>11</sup> This made tracking of ELL student achievement difficult, which meant that districts and states, in effect, were not being held accountable for improving educational outcomes for ELLs. This also meant that it was unclear how ELLs, or millions of Latino students, were faring academically and whether or not they were receiving high-quality instructional services. Consequently, during the reauthorization of ESEA, the National Council of La Raza (NCLR) worked with

Congress to ensure that NCLB would help districts and states to appropriately include ELLs in their assessment and accountability systems. Under NCLB, sanctions are now tied to ELL and Latino student outcomes and, at least in theory, there is clear accountability. Now a part of schools' bottom line, ELL students will be more likely to have access to rigorous coursework and highly-qualified teachers.

The law has unarguably directed substantial new attention toward ELL student achievement. Since the enactment of NCLB, educators and policy-makers are grappling with the challenge of improving Latino and ELL student achievement as a means of improving overall student academic outcomes, many for the first time. However, in the years since NCLB was enacted, demands for changes and even outright defiance of the law at the local and state levels have become common. For example, in 2004, school chiefs of 14 states sent a joint letter to U.S. Education Secretary Rod Paige requesting permission to modify the accountability system model set by NCLB.<sup>12</sup> In addition, state legislation was introduced in approximately 36 states in 2004 and 2005 seeking increased flexibility, or more funding under the law, or limiting participation in the federal law.<sup>13</sup> The 2005 passage of Utah's state law allows state education laws to supersede NCLB,<sup>14</sup> and Connecticut and Maine have considered suing the U.S. Department of Education over NCLB.<sup>15</sup> In response, the Administration has modified some of the law's accountability provisions since its enactment, including those related to ELLs. Although advocates have welcomed some of these adjustments, some of NCLB's provisions

holding schools accountable for student achievement outcomes, particularly those of ELLs, have been diluted by the modifications.

While NCLB continues to hold considerable promise for closing the academic achievement gap for ELLs, the challenges that lie before schools are considerable and the political will to uphold the rigor of the law is uncertain. Absent immediate, firm leadership and policy interventions, it is unlikely that ELL academic outcomes will improve, and as noted above, improving the school system as a whole is dependent in large part on whether or not ELL outcomes improve. Fortunately, NCLR believes that policy-makers are genuinely seeking answers that will inform how schools can appropriately include ELLs in their accountability systems.

NCLR has prepared this issue brief to help inform future dialogue on assessment and accountability. The brief will examine the progress and manner in which states have implemented the federal law's accountability and testing provisions with respect to ELLs. Specifically, this paper:

- Provides an overview of the law's key assessment and accountability provisions affecting ELLs
- Reviews the manner in which local, state, and federal decision-makers have implemented these provisions
- Presents policy recommendations informing present and future implementation of the law as it pertains to ELL students

## THE PROMISE OF NCLB FOR ENGLISH LANGUAGE LEARNERS

Prior to NCLB, the ELL student population was often overlooked. Little to no accountability for the learning of these students existed. Indeed, most states did not include ELLs in their accountability systems. For example, a report by the Citizens' Commission on Civil Rights indicates that 22 states did not appropriately include ELLs in their assessment systems under NCLB's predecessor, the Improving America's Schools Act.<sup>16</sup> In Massachusetts, 78% of ELL sophomores were exempted from the state's reading/English language arts test in 1999-2000.<sup>17</sup> Student performance data about these students, as a result, were limited as well, and the little data that were collected revealed dismal academic outcomes. For example, only 2% of tenth-grade ELLs in Florida met the state's standards in reading/English language arts in 1999-2000, and gaps between ELLs and non-ELLs in other states ranged from approximately five to 60 points in difference.<sup>18</sup>

Based on the key premise that all students can learn, NCLB is intended to address these disappointing statistics through a standards-based reform approach. Standards-based reform includes three major theoretical components. First, high standards will motivate students to improve their performance if they are challenged by rigorous academic courses. Second,

accurate assessments will be used to measure improvement and make important decisions about students. Third, this reform will lead to school system accountability by providing parents, policy-makers, and advocates information about the performance of their local schools. Therefore, based on these elements, NCLB is an opportunity to ensure that ELL students obtain access to the rigorous coursework they need to meet challenging standards, and that their progress is measured by appropriate assessments. In addition, the reporting of this information required under NCLB can provide parents of ELLs and the community at large with the tools to hold local schools accountable for helping ELLs meet academic standards.

### KEY NCLB PROVISIONS AFFECTING ELLS

Underlying NCLB is the fundamental and ambitious goal of closing the academic achievement gap and bringing all students to 100% proficiency in core academic subjects by 2014. In an effort to track schools' progress toward this goal, states have set yearly benchmarks for all students and certain

#### What is AYP?

Under NCLB, a school is considered to make AYP only if ELLs, each racial/ethnic group, low-income students, and students with disabilities, as well as the overall student population, meet statewide proficiency targets in math, reading/language arts, and science. In addition, states must include graduation rates in determining AYP for secondary schools and one additional factor, such as school attendance or grade retention, in determining AYP for elementary schools. Schools must ensure that ELL students also meet English proficiency benchmarks, Annual Measurable Achievement Objectives (AMAOs), in order to make AYP.

subgroups, including Latino and ELL students. In addition, states have set English-language proficiency benchmarks for ELLs. Assessments are the key tool used by states to track schools' adequate yearly progress (AYP) toward these benchmarks and to hold them accountable for student outcomes. While NCLB allows a great deal of state and local flexibility, the law also provides some specificity concerning assessment and accountability.

### ASSESSMENTS

NCLB requires that by the 2007-2008 school year states must administer reading/language arts and math assessments on an annual basis in grades 3-8 and at least once in grades 10-12, as well as annual science assessments in grades 3-5, 6-9, and 10-12. The general testing requirements in NCLB apply similarly to both ELL students and their English-proficient peers. Some of these provisions, however, have important implications for ELLs. Particularly, the federal law stipulates that the assessments used by states must be aligned to state academic content standards. In addition, the tests must be valid, reliable, and of adequate technical quality for each of the purposes for which the assessment system is used. Finally, NCLB states that assessments must be consistent with nationally recognized professional and technical standards. If properly implemented and enforced at the state and federal level, these safeguards can mitigate the misuse of tests and help ensure that data collected from state tests are meaningful to educators, parents, and advocates.

NCLB also includes specific provisions concerning the assessment of ELLs. The federal law requires states to:

- Include ELL students in their annual state assessments of reading/language arts, math, and science – not exempt them.
- Assess ELLs in a “valid and reliable manner.”
- Provide reasonable accommodations, including, to the extent practicable, “assessments in the language and form most likely to yield accurate data on what such students know and can do in academic content areas,” and, if needed, with the assistance of the U.S. Department of Education.
- Identify the languages for which student academic assessments are not available and “make every effort to develop such assessments.”
- Assess ELL students who have attended U.S. schools for three or more consecutive years in English, though a waiver for a maximum of two additional years may be granted on a case-by-case basis.
- Annually assess English-language proficiency in the areas of reading, writing, speaking, and listening.

These provisions provide important parameters for assessing ELLs. However, as is discussed later in this brief, poor or an altogether lack of guidance for their implementation has weakened many of these provisions.

## ACCOUNTABILITY

As noted previously, federal provisions requiring states to test ELLs are not new. However, NCLB strengthens the inclusion of ELLs by linking both their test participation and performance to accountability sanctions. With respect to participation, NCLB requires that states assess 95% of their overall student population, as well as 95% of certain subgroups, to make AYP (the “95% rule”). ELLs are one of the subgroups in which 95% of students must be assessed. Therefore, schools face sanctions (*see side box*) unless nearly all of their ELL student population are tested.\* Similarly, schools risk facing sanctions if their ELL student population fails to demonstrate progress on both state academic and English-language proficiency assessments.

In addition, states must include graduation rates as an indicator in determining AYP for high schools, though guidance released by the U.S. Department of Education relaxed this requirement. This has important implications for Latinos and ELLs for two reasons: 1) Latinos and ELLs have a disproportionately high dropout rate compared to other groups,<sup>19</sup> and 2) accountability that is principally based on test scores can have the unintended effect of creating incentives for schools to push out low-performing students, which have traditionally included Latinos and ELLs, thereby exacerbating the already high dropout rate in these groups.<sup>20</sup> Most at risk for this type of gaming are late-arrival ELLs who first enter the U.S. school system at the ninth grade level or

## NCLB’s Accountability Sanctions

A school shall be identified for “school improvement” if it fails to make AYP for two consecutive years. Schools must come up with a two-year school improvement plan that addresses the specific problem that caused the school to be identified for improvement, includes professional development, and enhances parental and community involvement. Sanctions are triggered in the following manner after the school has been identified for improvement:

*Year Two* – Students attending schools identified for school improvement can immediately transfer to another school in the district.

*Year Three* – Students in such a school can continue to transfer and can receive supplemental services outside of the school if the school fails to make AYP one year after it has been identified for school improvement.

*Year Four* – If the school fails to make AYP for two years after it has been identified for school improvement, students can continue to transfer and receive supplemental services, and the school can be reconstituted. Reconstitution includes such options as replacing the staff relevant to the school’s failure to make AYP, changing the curriculum, and extending the school day or year.

*Year Five* – If a school fails to make AYP for three years after it has been identified for school improvement, the above student services and school-level options apply. In addition, the school can be reopened as a charter school, turned over to a private management company, or be subject to a state takeover.

\* In a policy letter dated May 19, 2004, Assistant Secretary of Education Raymond Simon clarified that if a school is making AYP but falls short of assessing 95% of students in one subgroup, it may meet the “95% rule” requirement by using a three-year test participation average.

above and have limited time to master the English language, keep up academically with their peers, and pass the required state exams.

While NCLB employs top-down accountability by imposing federally-mandated sanctions on schools, the federal law also expects parents and community members to enforce the accountability provisions. Under NCLB, parents and stakeholders have an unprecedented opportunity – and responsibility – to become key players in their state’s accountability system. By arming parents and the public with information about their neighborhood schools and state education system, NCLB seeks to increase the likelihood that parents will engage in, monitor, and hold their child’s school accountable for classroom learning and outcomes.

The dissemination of school, district, and state data through “report cards” and Parent Assistance Programs, which aim to help parents use this information, are two important ways in which the federal law attempts to enhance the roles of parents and community members in accountability. Every year, states and school districts must disseminate report cards to parents which are “in an understandable and uniform format, and to the extent practicable, provided in a language that the parents can understand.”<sup>21</sup> The report cards, which must include disaggregated data that illustrate how ELL and Latino students compare to their English-proficient and non-Latino peers on academic assessments and graduation rates, are intended to aid parents and the community in

identifying significant gaps between student subgroups. In addition, the report cards must include disaggregated data on the percentage of students that were exempted from state assessments to help parents better identify any disproportionate rates of exemptions among subgroups. Although not required, report cards can also include the progress that ELL students are making in learning English.

To get help in understanding and interpreting the information in these report cards, parents can turn to community-based Parent Assistance Programs, or Local Family Information Centers (LFICs).<sup>\*</sup> These centers can also inform parents about issues such as curriculum, standards, instruction, and assessments, and can help parents of ELLs make informed decisions about their child’s education, such as which program of study is best for helping them learn English and master academic coursework.

In addition, NCLB includes provisions to enhance communication and information-sharing between schools and parents of ELL children specifically. Within 30 days of a new school year, schools must inform parents of ELLs of:

- The reasons for identifying their child as LEP and as in need of placement in a language instruction educational program
- Their child’s level of English proficiency and how it was assessed
- The status of their child’s academic achievement

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\* Local Family Information Centers were established under Title V (Promoting Informed Parental Choice and Innovative Programs) of the No Child Left Behind Act. However, they have never been funded.

- ▶ The method of instruction used in the program in which their child is participating, and the methods of instruction used in other available programs, including how such programs vary in content, instruction goals, and use of English and native-language instruction
- ▶ How the program will help their child learn English and meet age-appropriate academic achievement standards for grade promotion and graduation
- ▶ The specific requirements their child must meet to exit the language instruction program, the expected rate of transition into “mainstream” classrooms, and the expected rate of high school graduation
- ▶ Information pertaining to the rights that parents have to remove their child from a program and to opt out of a certain language instruction program or to choose another available program or method of instruction
- ▶ Information intended to assist parents in choosing among various programs and methods of instruction if more than one is offered

Furthermore, parents must be notified if the language instruction program in which their child is enrolled fails to meet the benchmarks for academic achievement and language acquisition. All such information should be provided in an easily accessible format and, if possible, in a language that the parent can understand. Finally, schools are required to

conduct effective outreach to parents of ELLs and inform them of how they can be active participants in their child’s education.

### **RESOURCES**

Funding is an important component of any accountability system. While a number of programs and initiatives under NCLB work together to close the achievement gap between ELLs and their peers, funding for assessment development, instructional programs for ELLs, and Parent Assistance Programs are of particular importance. In discussing funding, this section will focus on these three components.

NCLB authorized up to \$490 million to support the implementation of the law’s testing provisions. This funding can be used to support states in their development of assessments and standards, as required by NCLB. If states have already developed assessments and standards that meet NCLB guidelines, states can use these funds either to administer assessments or to enhance their already-developed assessments. The law states that these funds can specifically be used to improve assessments for ELLs.

In addition, targeted funding for ELL instruction and programs was authorized under NCLB’s Title III, Language Instruction for Limited English Proficient and Immigrant Students, at a level of \$750 million. However, NCLB changed the way programs for ELLs are funded in comparison to the old law. First, NCLB consolidated the former Bilingual Education Act and the Emergency Immigrant Education Act.\* These programs were also changed from being competitive-based grant

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\* In fiscal year 2001, prior to the passage of NCLB, the Bilingual Education Act and the Emergency Immigrant Education Act were funded at a total level of \$446 million. In fiscal year 2002, programs for ELLs and immigrant students were funded at \$664 million.



programs to a single state formula program, based on the number of ELL and immigrant children, for any year in which the Title III appropriations level exceeds \$650 million. This modification was designed to ensure that federal ELL education funds reach a greater number of ELLs, particularly in areas that had not previously received dollars from the once competitive-based federal grant program.

Finally, NCLB authorizes the previously mentioned LFICs under Title V, “Promoting Informed Parental Choice and Innovative Programs.”\* Funding these centers would ensure that parents of ELLs are in a position to hold schools accountable for helping their children meet the rigorous academic benchmarks delineated in the law.

## **CHALLENGES TO EFFECTIVE IMPLEMENTATION OF NCLB FOR ENGLISH LANGUAGE LEARNERS**

NCLB has the potential to improve educational outcomes for Latinos and ELLs by strengthening assessment and accountability. However, while NCLB in its current form offers opportunities for educational improvement, implementation of NCLB has revealed areas of the law that have fallen short of their mark. However, these challenges in implementation can help inform ways in which the law can be fine-tuned in the future, through legislative or administrative policy changes at the federal and state levels.

Appropriate implementation of the law’s testing and accountability provisions, in particular, has proven to be the largest obstacle in effectively closing the gap between ELLs and their English-proficient peers. Inadequate resources for ELL students have only exacerbated these obstacles. The challenges in assessment, accountability, and resources, as they pertain to ELLs, are reviewed below.

### **CHALLENGES IN ASSESSING ELLS**

Although assessment of ELLs is not new, NCLB has raised the stakes for and called attention to the lack of appropriate assessments and testing accommodations available for ELLs. Under NCLB, assessments are intended to act as the linchpin to improving nearly every aspect of education – teaching and learning, standards, accountability, and parental and community engagement. Given the stronger emphasis on tests, it was clear that improving test validity would need to become a priority, and the expectation was that strong supports would be provided. Thus far, however, actual implementation of appropriate testing systems has fallen far short of meeting the promise of the Act, particularly with respect to test validity and accommodations.

#### **VALIDITY OF TESTING INSTRUMENTS**

Due to lack of resources and technical assistance from the U.S. Department of Education, most states are using invalid and inappropriate testing instruments to assess ELLs in academic content. These assessments are generally invalid because they were not developed for use with ELLs, or because they are being used for a purpose other than for which they were designed.

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\* Funding for LFICs is based on funding under the Parent Information Resource Centers (PIRCs) section of NCLB. PIRC appropriation levels must exceed \$50 million before there can be a grants competition under the LFICs program.

In the first case, most tests that assess students' knowledge of academic content are inappropriate for assessing ELLs because they are designed under the assumption that the test-taker is a native speaker of the English language. A valid testing instrument for ELLs should be designed for and "field-tested" with ELLs and may involve incorporating students' native language or simplifying the language of the test.

Research indicates that many English-language assessments are first and foremost a measure of English-language proficiency for ELLs and do not accurately reflect content knowledge of a subject.<sup>22</sup> While the law, as previously described, allows states to assess Latino and ELL students appropriately by offering the flexibility to use native-language assessments, the U.S. Department of Education reports that only 13 states have taken steps to ensure that native-language assessments are available for ELL students.<sup>23</sup> Further evaluation of state assessments, however, indicates that only 11 states offer native-language assessments statewide.<sup>24</sup> Many states cite the linguistic diversity of the ELL population as a key obstacle in developing native-language tests, noting that more than 130 languages may be represented in their schools.<sup>25\*</sup> Some English-only states, such as Arkansas, note that native-language assessments run counter to state law.<sup>26</sup>

The complexity of developing and using native-language assessments appropriately has probably hindered many states from moving forward on this front. The translation of English-language

tests into native-language assessments alone is not sufficient; valid native-language tests capture linguistic subtleties specific to each language as well as cultural appropriateness. In addition, native-language assessments, even if valid, may not be appropriate for some ELLs, such as those who have not received classroom instruction in their native language.<sup>27</sup>

While some states are using assessments that were not designed for use with ELLs, other states are using tests designed for this population for the wrong purposes. As noted previously, tests may also be invalid as a result of their improper use. For example, a test designed to assess an ELL's English-language proficiency, while valid for that purpose, may not be a valid test to assess an ELL student's academic content knowledge. Schools in Virginia, with authorization from the U.S. Department of Education, use an assessment designed to measure student progress in acquiring English-language skills to assess ELLs' academic content knowledge in language arts.<sup>28</sup> Therefore, while this assessment may accurately convey how Virginia's ELLs are progressing in their attainment of English, this same test yields invalid data concerning ELLs' performance in reading/English language arts.

Clearly, the development of valid testing instruments for ELLs is a complicated task, but it is one that has grown in importance as the ELL population has become a larger share of the nation's school enrollment. It is also important to note that while NCLB allows states to use alternative tests for ELLs who have

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\* Nearly 80% of ELLs in U.S. public schools speak Spanish as their first language. Thus, Spanish-language content area assessments would reach a significant number of ELLs. In contrast, states that choose not to use native-language assessments are choosing not to appropriately assess ELL students.

been enrolled in U.S. schools for less than three years, attainment of academic English proficiency can take four to seven years, even in districts that have been identified as most successful in aiding ELLs in attaining proficiency.<sup>29</sup> Therefore, developing appropriate assessments for ELLs beyond the arbitrary marker of three years is critical. Although the U.S. Department of Education has provided some support to help states implement NCLB's requirements for ELLs,\* better targeting of this assistance and increased guidance is necessary to ensure that valid English and native-language assessments are developed, easily accessible to states, and used appropriately.

#### ACCOMMODATIONS

NCLB gives states the flexibility to adopt testing accommodations for LEP test-takers, and most states report using them. The accommodations that states\*\* report using most frequently are extra assessment time (44 states), small group or individual administration (43 states), separate room administration (39 states), directions read aloud or explained (39 states), reading aloud of questions in English (36 states), use of dictionaries (36 states),

breaks during testing (31 states), and oral directions provided in the native language (30 states).<sup>30</sup>

However, the most frequently used accommodations are not necessarily those that have been found to be the most effective in validly reducing the testing gap between ELLs and non-ELLs. While research on appropriate accommodations for ELLs is thin, existing studies suggest that simplifying the language of test items with excessive language demands alone can improve ELL performance by approximately 10-20%, regardless of the subject area, without affecting test rigor.<sup>31</sup> In fact, linguistic modification of test items is one of the few, if not the only, accommodation that narrows the test performance gap between ELLs and non-ELLs.<sup>32</sup> Yet, only ten states employ this accommodation.<sup>33</sup> Meanwhile, providing extra time, the most frequently reported accommodation by states, has been shown to improve test performance for both ELLs and non-ELLs, without narrowing the gap, indicating that it may not be an appropriate accommodation.<sup>34</sup> It is clear that both research and increased guidance in selecting appropriate accommodations for ELLs are essential.

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\* In its March 2005 Biennial Evaluation Report to Congress on the Implementation of the State Formula Grant Program, the U.S. Department of Education states that its technical assistance to states in this area includes: two sets of non-regulatory guidance, five technical assistance meetings with state educational officials, delivery of technical assistance via 20 video-teleconferences, three national summits, 30 presentations at regional and national conferences, and 35 site visits. In addition, the Department has awarded several consortia of states and other organizations to develop English-language proficiency tests, research appropriate accommodations, and develop standards-based assessments for ELLs. Limited information on the status of these projects is available.

\*\* Counts include the District of Columbia and Puerto Rico.

## Guiding Principles in Selecting Accommodations

According to Jamal Abedi, a leading researcher in the assessment of ELLs, accommodations should be informed by the following:

- ▶ *Effectiveness.* An appropriate accommodation is effective in reducing the test performance gap between ELLs and non-ELLs.
- ▶ *Validity.* An appropriate accommodation makes the assessment more accessible to ELLs without altering the rigor of the assessment or providing ELLs an unfair advantage over non-ELLs.
- ▶ *Differential Impact.* An appropriate accommodation weighs the effect of student background characteristics on ELL performance, such as length of time in the U.S., overall grades, student mobility, and academic English-language proficiency. Other experts also add that prior schooling is significant.
- ▶ *Feasibility.* Although most accommodations have significant costs, some are more practicable in large-scale assessment and should be weighed carefully against the effectiveness and validity of the accommodation.

Source: Abedi, Jamal, "Assessment and Accommodations of English Language Learners," *CRESST Policy Brief 4*. Los Angeles, CA: University of California, National Center for Research on Evaluation, Standards, and Student Testing, 2001. Also, see Butler, Frances A. and Robin Stevens, *Accommodation Strategies for English Language Learners on Large-Scale Assessments: Student Characteristics and Other Considerations* (CSE Technical Report 448). Los Angeles, CA: University of California, National Center for Research on Evaluation, Standards, and Student Testing, 1997.

## CHALLENGES IN ACCOUNTABILITY

NCLB's emphasis on holding schools accountable for ELL student outcomes is an important step in the right direction. However, this added emphasis has unveiled a number of issues that have hindered states from appropriately including ELLs in their accountability systems. These challenges include accurately determining AYP, addressing the unique challenges facing late-entrant ELLs, accuracy in reporting of data, and targeting of appropriate supplemental services to ELLs.

### ADEQUATE YEARLY PROGRESS

Obtaining an accurate measure of AYP for all subgroups is an issue of much debate, but the ELL subgroup presents some unique challenges. First, inconsistency in the manner in which states classify LEP children has made it difficult to draw comparisons across states. NCLB

defines LEP children as those who a) are ages 3-21, b) are enrolled or prepared to enroll in a K-12 school, c) were not born in the U.S. or whose native language is one other than English, and d) have difficulty speaking, reading, writing, or understanding English to the extent that it hinders their ability to score at a proficient level on state assessments, to successfully excel in English-language classrooms, and to participate fully in society. While seemingly comprehensive, this definition fails to capture the diversity of the ELL population. Not only does this population represent more than 400 languages,<sup>35</sup> but ELL students also vary in socioeconomic status, length of time in the U.S., and proficiency in both their native language and academic English. Moreover, because the current definition lacks specificity, states differ in their interpretation and classification of LEP children, making it difficult to draw comparisons.

Second, NCLB's flexibility in allowing states to determine the minimum number of students to constitute a school's subgroup for AYP determinations, or the "n-size," waters down the rigor of the law's accountability provisions. At risk here is the possibility of excluding a subgroup from the accountability system if an n-size is set too high. While the law requires states to determine an n-size that both will yield statistically valid data and will not allow the identification of individual students for purposes of privacy, this number varies significantly across states, from an n-size of five in Maryland to 100 in California.<sup>36</sup> In addition, some states have implemented, with the U.S. Department of Education's approval, a larger n-size for ELLs and students with disabilities than for other subgroups. Such a policy allows schools to avoid being held accountable for ELL student outcomes while other subgroups of the same size are included in the state's accountability system. While offering some degree of flexibility in determining this number is reasonable given the high concentration of ELLs in some states and a small number in others, a greater understanding of an appropriate n-size is needed.

Third, the lack of stability within the ELL subgroup population makes it difficult to evaluate its progress in meeting standards and benchmarks. Because ELLs exit the LEP subgroup when they become proficient in English, and students with limited English

proficiency enter the subgroup on an ongoing basis, ELL academic and English proficiency results are masked. In an effort to address this issue, the U.S. Department of Education proposed regulations\* in June 2004 allowing states to 1) exempt recently-arrived ELLs who have attended U.S. schools for less than ten months from the reading/language arts assessment, 2) exclude math test scores for recently-arrived ELLs for AYP purposes, and 3) include ELL students who have attained English proficiency and have been reclassified as fully-English-proficient in the LEP subgroup for up to two years.<sup>37</sup> The exclusion of any group of students from NCLB's accountability system contradicts the law's operating principles, and, therefore, the possible exemption of excessive numbers of recently-arrived ELLs and their scores is a matter of grave concern. Exclusion fails to address the larger and more substantive issue of accurately assessing LEP students and ensuring their inclusion in a valid accountability system. The U.S. Department of Education's third change, however, is an important step in the right direction. Still, this issue merits careful attention. Longitudinal tracking of ELLs, including those who become fully-English-proficient, is critical to gaining a better understanding of how ELLs are progressing in academics and English-language proficiency. Unfortunately, most states and districts currently lack the capacity to collect and report such data.

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\* The regulations were announced February 19, 2004, by former Education Secretary Rod Paige. The three changes described above took immediate effect. The Department issued proposed regulations on June 24, 2004, for public comment which reiterated these changes and further elaborated on related implications. At the time of this writing, the regulations have not been finalized. For more information and NCLB's position regarding the proposed regulations, please see <http://www.nclb.org/content/publications/detail/28870/>.

Fourth, while NCLB requires states to set annual benchmarks for all subgroups which will lead to 100% proficiency in reading/language arts, math, and science by the year 2014, research on expected gains for ELLs is extremely limited. Therefore, states lack guidance in setting high but attainable benchmarks for ELLs. Some research has found that there is a continuing and widening achievement gap between ELLs and native English speakers, suggesting that unless ELLs are given “more time on task,” such as through summer and after-school programs, it may not

be possible for them to keep pace with native English speakers.<sup>38</sup> This does not imply that states should yield to the notion that ELLs cannot meet the same standards as their English-proficient peers; rather, it offers states an idea of the level of investment needed to help ELLs meet similar high standards. In addition, this suggests that “growth” accountability systems (*see text box*), which measure the growth of individual students’ performance over time, may warrant consideration as a way to fairly and accurately measure ELL gains.

### Growth and Index Models

Currently, in holding schools accountable for academic progress, NCLB compares the scores of a grade-level cohort of students with those of previous cohorts of students in the same grade. Thus, individual student progress is not tracked. In November 2005, the U.S. Department of Education announced it would approve proposals from up to ten states to participate in a pilot program that would allow for the development and use of *growth-based* accountability systems that track individual student achievement from year to year. To qualify for the pilot program, states must demonstrate that their accountability model meets the following core principles:

- ▶ Ensure that all students are proficient by 2014 and set annual goals to ensure that the achievement gap is closing for all student groups
- ▶ Set expectations for annual achievement based upon meeting grade-level proficiency, not based on student background or school characteristics
- ▶ Allow for accountability for student achievement in reading/language arts and mathematics, separately
- ▶ Ensure that all students who are required by NCLB to be tested are included in the accountability model, and that all schools and districts, statewide, are held accountable for the performance of all student subgroups
- ▶ Demonstrate that the state’s assessment system include annual reading/language arts and mathematics assessments in grades 3-8 and in high school; has been operational for more than one year; has received approval through a peer review process; and produces comparable results from year to year
- ▶ Track student progress
- ▶ Include student participation rates in state assessments and an additional academic indicator (e.g., graduation rates)

The Department will also allow states that do not have the capacity to use a growth model according to the above principles to use, instead, an index model. An *index model* gives schools credit for moving students from “below basic” to “basic,” even if they are not yet “proficient.” States that use index models must still abide by the end target of having students proficient in reading/language arts and mathematics by 2014.

AYP is intended to give parents and the public accurate information about how well all students are faring academically, and it determines whether or not schools will face NCLB's sanctions. In 2003-2004, all but two states (Alabama and Michigan) failed to make AYP for ELLs in reading/English language arts and mathematics, and hundreds of schools are facing sanctions as a result.<sup>39</sup> While several factors may be contributing to the large number of schools facing sanctions, inaccurate measurement of AYP for ELLs is likely one reason. Fine-tuning AYP for ELLs should be a priority to help NCLB achieve its intended results.

#### **LATE-ENTRANT ENGLISH LANGUAGE LEARNERS**

High schools face unique challenges in serving the ELL student population due to the larger share of foreign-born immigrant children in the upper grades (5.7% of grades 6-12) than in the lower grades (3.0% of grades PreK-5).<sup>40</sup> In addition, immigrant children in secondary schools are more likely to be late-entrant immigrants who have been in the U.S. for less than five years, in comparison to immigrant children in the lower grades.<sup>41</sup> Under NCLB, high schools face the enormous challenge of helping recently-arrived immigrant and ELL high school students acquire English, meet academic benchmarks, and graduate, and all of this must occur in a very short time frame.

In general, secondary schools are largely unprepared to serve this population.

Interestingly, ELL high school students are less likely to be enrolled in language instruction classes (48%) than elementary school-aged ELLs (76%), despite the larger share of late-entrant immigrant students and the limited time to master the English language before graduation.<sup>42</sup> With little support to learn the language and pass the assessments required by NCLB, many of these students have been steered out of traditional public schools and into GED or other adult education programs, or out of the education system altogether, contributing to the disproportionately high dropout rate among Latinos. The effects have been well documented in New York City where dropout rates among ELLs have risen steadily.<sup>43</sup> In fact, limited English proficiency and immigrant status are characteristic of a substantial proportion of Latino dropouts. For example, 15% of Latinos ages 16-19 who are fluent in English are high school dropouts, compared to 59% of Latino ELLs of the same age group.<sup>44</sup> In addition, in 2000, the status dropout rate\* of Hispanic 16- to 24-year-olds born outside of the United States was 43.4%, or nearly three times as high as the status dropout rate for first-generation Hispanics of the same age group (15.4%). Moreover, foreign-born Hispanic dropouts account for 26% of all dropouts in the United States.<sup>45</sup>

Unfortunately, relaxation of NCLB's accountability provisions for graduation rates has masked the dropout problem among immigrant ELLs. Under NCLB, states must hold secondary schools accountable for both

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\* "Status" dropouts are persons who are not enrolled in school and who are not high school graduates. People who have received GED credentials are counted as graduates. Data are based upon sample surveys of the civilian noninstitutional population.

improving performance on state assessments and increasing graduation rates for each ethnic subgroup. However, the U.S. Department of Education, departing significantly from the law's theoretical underpinnings and congressional intent, issued regulations in December 2002 releasing states from the law's requirement of disaggregating graduation rates.<sup>46</sup> Not only did these final regulations "officially" authorize school officials to use graduation rates in the aggregate, but "some state officials suggested that the Department of Education's approval of weaker systems had encouraged them to employ 'softer' graduation rate requirements than they had originally proposed."<sup>47</sup> As a result, states can report graduation rates in the aggregate and hide the fact that few ELLs are graduating from high school.

While stronger accountability for improving graduation rates among Latinos and ELLs is critical, it is clear that states and secondary schools need increased support to address the unique needs of late-entrant ELLs. Education practices and policy that give such students more time on task, in particular, appear promising. For example, Virginia's Arlington Public Schools has made summer school, after-school tutoring, and/or weekend tutoring virtually mandatory for ELL students. As a result, these students have had more time to learn English and stay on track academically.

Late-entrant ELL students pose challenges to educators and to NCLB's accountability system. While they are small in number, they deserve the same opportunity as other students to graduate from high school and go on to college or enter the workforce. Unfortunately, their unique situation is not adequately addressed under NCLB and requires modifications to

NCLB as well as additional supports to accelerate their academic progress and English-language acquisition.

## **REPORTING**

Lack of effective reporting systems for ELL parents also undermines the law's accountability provisions. In theory, all parents should have access to the data collected through state assessments and other means to inform their decisions about their children's schooling and to help them hold their children's schools accountable. Much of this information is made available to parents and the community in state and district annual report cards, which are required under NCLB to be easily accessible and "to the extent practicable" in a language other than English when appropriate. However, most ELL parents do not have meaningful access to report card data.

In general, most states post their report cards on their state education website, and several states, including California, Illinois, New Mexico, North Carolina, and Oregon, post the report cards in Spanish. Still, aside from the report card data, the websites themselves must be navigated in English, making it extremely difficult for Spanish-speaking parents to find the information they need. Guidance released by the U.S. Department of Education encouraged states to disseminate report cards in multiple ways, noting that the Internet alone was not sufficient. However, some states, such as New York, still do not use other means.<sup>48</sup> For Latinos and parents of ELLs who have less access to the Internet,<sup>49</sup> or who may be less familiar with the U.S. school system and culturally predisposed to perceive educators and school officials as authority figures, disseminating report cards using other methods



is important. If funded, LFICs, or other community-based Parent Assistance Programs, can fill this information gap for Latinos, who often turn to such entities for many of their social service needs. In addition, Spanish-language media can serve as a way for reaching and informing parents.

Finally, it is important to note that the U.S. Department of Education's proposed regulations pertaining to assessment and accountability practices for ELLs have important implications for reporting of data to parents of ELLs and the community at large. The proposed regulations would not allow the inclusion of former LEP students' achievement scores as part of the LEP category on state and district report cards "because there is a difference between data used for system accountability and data used for providing information to parents."<sup>50</sup> This directive conflicts with NCLB's principle of informing parents and other community stakeholders so they can track the progress of students in local schools. While allowing schools to include former LEP students in the broader LEP subgroup for AYP determinations is important, it is equally critical that states and districts report achievement results to parents in the same manner in which they are included for AYP purposes. As key players in school accountability systems, parents and the community should be equally informed of the progress that their school is making to help ELL students learn English.

#### **SUPPLEMENTAL SERVICES**

Under NCLB, students attending persistently low-performing schools are eligible to receive free tutoring, either by the school district or another "supplemental service provider," which

can include nonprofit community-based organizations, for-profit companies, school districts, or institutions of higher education. For ELLs, additional time on task is critical and, therefore, access to supplemental education services is important. Unfortunately, ELLs, along with students with disabilities, do not have equitable access to these tutorial services in comparison to their peers. A key challenge is ensuring that parents of ELLs are informed of the availability of supplemental services. According to a report by Advocates for Children, letters informing parents of New York City's students of supplemental services are difficult to read and understand, and outreach to parents varies from school to school.<sup>51</sup>

In addition, ELLs are having a more difficult time finding providers that can adequately meet their needs, particularly through private companies, which make up 63% of all state-approved service providers.<sup>52</sup> Although NCLB requires states and districts to ensure that providers of supplemental educational services can serve all eligible students, including ELLs, many private providers are unwilling to serve ELLs.<sup>53</sup> While private providers indirectly receive federal funds to offer such services, the U.S. Department of Education's guidance relieves them of the responsibility to adhere to civil rights protection laws.<sup>54</sup> Instead, it places the burden on states and districts, the direct recipients of federal funds, to ensure that all providers do not discriminate. In addition, some providers simply lack the capacity to serve ELLs. For example, a survey of private providers in New York City indicated that 60% of respondents did not have services available for ELLs.<sup>55</sup> In the event that none of the state-approved providers can serve ELLs, the school

district must provide tutorial services directly to ELLs or through a contracted provider that may not be on the state's approved list of providers. Some districts, such as Chicago Public Schools, have provided tutorial services to ELLs themselves.<sup>56</sup> However, in general, little research and monitoring of supplemental services exist and, therefore, it is unclear to what extent districts are taking on or even have the capacity to take on this responsibility themselves.

High-quality supplemental services can help ELLs catch up academically with their English-proficient peers and should be focused on those least likely to meet academic benchmarks, such as ELLs. Currently, this provision of NCLB is not fulfilling this important role.

## CHALLENGES IN OBTAINING ADEQUATE RESOURCES

A comprehensive accountability system encompasses "checkpoints" from the top down and bottom up. Thus, if all schools are pushed to meet the same high standards, there must be a similar effort to ensure that all schools have the resources needed to meet these standards. Unfortunately, federal funding to carry out the law's assessment and accountability provisions and to authentically include ELLs has been inadequate. For example, funding for ELL language instruction programs under Title III of NCLB reached its peak in fiscal year (FY) 2003 at \$686 million. Since then, the program has been cut each year, receiving \$669 million in FY 2006. As a formula-grant program,

### Funding for Select Federal Education Programs Concerning Assessment and Accountability for ELLs

Program	FY 2002 Appropriation (in millions)	FY 2003 Appropriation (in millions)	FY 2004 Appropriation (in millions)	FY 2005 Appropriation (in millions)	FY 2006 Appropriation (in millions)
Parent Assistance Programs	40	42	42	42	40
Language Assistance State Grants	664	686	681	676	669
State Assessments	387	385	390	412	408

Source: "Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act," Conference Reports, Fiscal Years 2002-2006.

Note: The Local Family Information Centers (LFICs) are authorized under Parent Assistance Programs in Title V of the Elementary and Secondary Education Act and receive an appropriation of 50% of the amount allocated to Parent Assistance Programs and that exceeds \$50 million. Thus, for example, LFICs would receive \$2 million if Parent Assistance Programs were funded at \$54 million.

designed to reach the rapidly-growing population of ELLs in every public school, adequate funding is critical. Otherwise, the risk is that federal monies are spread too thinly and have little impact.

In addition, the President has failed to request a single dollar to fund Parent Assistance Programs and LFICs. Fortunately, Congress has provided some nominal funding for parent assistance activities. These dollars, however, have failed to reach LFICs, which are funded only if Parent Assistance Programs are funded at \$50 million or more.

Finally, while the President and Congress have provided funds to states for assessment development – \$408 million in FY 2006 – some of these funds have been used to improve assessments measuring student progress in attaining English. However, it is unclear how much of this money has been spent on the development of appropriate *academic* assessments for ELLs. States have the flexibility to use these funds for ELL academic assessments, but given the testing demands under NCLB, little progress in the development of native-language or simplified English academic assessments for ELLs has been made.

While federal funding to support NCLB implementation has been largely insufficient, the law has heightened the significance of fiscal equity and adequate resources at the state level. The responsibility that states bear in funding the federal education reforms is becoming clear as the trend favoring those who have challenged state education finance systems begins to emerge.<sup>57</sup> The outcomes of these cases have, at least in part, been due to the standards set by NCLB, as well as the increased data that have been generated as a result of the law's

accountability requirements. Thus, although states may be looking toward Congress and the Administration to increase resources for NCLB implementation, states must also fulfill their responsibility given that federal education dollars make up only 8% of all funding for education.<sup>58</sup>

## RECOMMENDATIONS

Most states are making efforts to assess and include ELLs in their accountability systems as a result of NCLB. However, the mere inclusion of ELLs in statewide assessments is not sufficient. During the reauthorization of ESEA, NCLR worked with Congress to ensure that NCLB would help districts and states to appropriately include ELLs. While some states and districts have enhanced their capacity to include ELLs under NCLB, implementation of the law has been difficult. As a result, ELLs have not fully benefited. Reasonable adjustments to NCLB's assessment and accountability provisions, with the needed resources, will help states and schools appropriately include ELLs. In addition, it will result in more accurate assessment data and improved identification of struggling schools. The following recommendations provide a broad framework for improving NCLB for ELLs primarily through modest changes to the law, leadership by the U.S. Department of Education, and funding of NCLB programs.

## ASSESSMENTS

Until the principal tools used to enforce accountability for ELL student outcomes are developed and made accessible, ELLs will remain on the periphery of NCLB's proposed accountability system. In addition, schools will be unable to accurately demonstrate any gains

that ELLs have made under their watch. Thus, to improve the accuracy of assessment for ELLs, NCLR recommends the following:

- ▶ **The U.S. Department of Education should increase research and investment in the development of a range of appropriate assessments and testing accommodations, including native-language and simplified English tests for ELLs.** A range of assessments must be developed given the student population’s varied language needs and instructional settings. While the Department should play a leadership role, dollars should be matched by states, private philanthropy, and other state and regional stakeholders.
- ▶ **The U.S. Department of Education should provide firm guidance to states regarding the law’s directive to assess ELLs “to the extent practicable, in the language and form most likely to yield accurate data.”** As noted above, more than three in four ELLs in U.S. public schools are Spanish speakers. Thus, native-language assessments in Spanish are unarguably “practicable.” In addition, simplified English tests can likely be used by ELLs of a variety of linguistic backgrounds. The Department should vigorously enforce this provision and provide leadership by helping states develop such assessments. Moreover, the Department should also invest in the development of native-language assessments in other high-incidence languages, including Asian languages.

## ACCOUNTABILITY

Improving the validity of assessments for ELLs is the first step toward an authentic accountability system. However, there are additional components that are equally critical. Authentic accountability for ELLs encompasses federal and state enforcement of inclusion of ELLs in AYP determinations, an accurate measurement of ELL academic progress, enforced accountability for pushout rates, improved reporting of data to parents, and equitable access to supplemental services. NCLR recommends the following:

- ▶ **With enforcement by the U.S. Department of Education, states and districts must continue to assess ELLs and include them in AYP determinations.** Exempting ELLs from NCLB’s AYP system should be a “non-starter” for policy-makers. While assessing and including ELLs in AYP is challenging, the alternative – eliminating accountability for improving ELLs’ academic outcomes and English-language acquisition – would do nothing to improve schooling for these children. One initial step that the Department can take to ensure that ELLs are assessed and included in AYP is to provide unambiguous guidance to states regarding an appropriate n-size and requiring the same n-size across all AYP subgroups.
- ▶ **The Administration and Congress should fine-tune the definition of AYP for ELLs.** For many schools, the ELL subgroup has presented some of the most significant challenges in their goal to make AYP and avoid sanctions. Limited

knowledge of expected gains for ELLs, together with the unique nature of the subgroup, has led to inaccurate measures of AYP for ELLs. Attempts to exclude or steer ELLs away from AYP determinations have been common as a result. To enhance the definition of AYP for ELLs, NCLR recommends the following:

- The Department and Congress should help build capacity to move toward a more comprehensive and unified classification of “LEP” children by tracking ELL students over time. Longitudinal tracking of ELLs, even after they become fully-English-proficient, can offer a more accurate assessment of their progress and provide stability to the ELL subgroup. Although states and districts currently lack the capacity to do this appropriately, the Department and Congress can provide some initial support by establishing a pilot or demonstration program with a consortium of states and districts.
- The Department should support research on expected gains for ELLs to inform the development of meaningful AYP benchmarks. In addition, the Department should ensure that the states which take advantage of the Department’s pilot program on growth models include “value-added” measures for ELLs, which are rigorous as well as attainable.

● **The U.S. Department of Education and Congress should enhance accountability measures for secondary ELLs, particularly late-entrant ELLs.** As was evidenced prior to NCLB, ELLs are among the most vulnerable when schools seek to game the system to avoid sanctions. At the secondary level, this is evidenced in increased dropout rates. Thus, enforced accountability for high school completion rates is critical for ELLs. In addition, because it is unreasonable to expect certain ELLs, especially late-entrant ELLs, to be prepared to pass high school exit exams, programmatic and policy responses that give late-entrant ELLs more time on task need to be explored. Specifically, NCLR recommends that the Department and Congress take the following steps:

- Enforce disaggregation of high school completion rates in AYP determinations and include ELLs as a subgroup.
- Enforce a standard definition or formula for calculating high school graduation rates across states.
- Create a grants program to allow school districts to establish early college high schools for ELL students who have mastered academic content but continue to struggle with English. These schools will keep these students from dropping out, give them a chance to improve their English so they can pass state exit exams, and keep them engaged by allowing them to earn some college credits. Such schools could be particularly effective for late-entrant ELLs.

► **The U.S. Department of Education, states, and districts should improve reporting of assessment data and other AYP indicators to parents of ELLs.** Under NCLB, parents bear a significant responsibility in holding their children’s schools accountable. Currently, however, parents lack the critical information to play this role capably. NCLR recommends that:

- States and districts improve reporting of assessment data by ensuring that they are both available and easily accessible to parents of ELLs in their native language and are disseminated through multiple media, such as the ethnic press.
- States and districts leverage the knowledge and capacity of community-based organizations, which have gained the trust of Latinos and parents of ELLs, to help disseminate report card data to parents of ELLs.
- The Department identifies and disseminates exemplary report cards and/or develops sample report cards for parents of ELLs through demonstration projects that can be adapted and adopted by states.
- The Department, in its final guidance regarding ELLs and accountability, ensures that states and districts report achievement results to parents in the same manner in which they are

included for AYP purposes.

Specifically, states and districts should include former LEP students in the LEP category both for determining whether or not schools are meeting AYP targets and in reporting results to parents.

► **The U.S. Department of Education and Congress should ensure equitable access to supplemental services for ELLs.** NCLR recommends the following:

- Policy-makers should strengthen NCLB provisions that require states to oversee supplemental service providers to ensure that they provide ELLs with access to high-quality services, including services in their native language.
- Congress should immediately reverse the Department’s regulation which says that supplemental service providers are not recipients of federal funds, thus relieving them of their responsibility under Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, ethnicity, and language status, among other categories. Freeing supplemental service providers, or any other federal funds recipient, from their responsibilities under Title VI does nothing to improve education and poses barriers for children who have the greatest need.

## RESOURCES

To be successful, NCLB education reforms require significant investment. By now, policy-makers should understand that this law cannot be implemented “on the cheap.” Policy-makers should be mindful of how rapidly the ELL population is growing and of the fact that many states, such as those in the Southeast and Midwest, lack the supports and expertise to appropriately serve ELLs. NCLR recommends the following:

- ▶ **The President and Congress must increase the federal investment in English language learner programs (Title III).** In the past several fiscal years, federal funding for language instruction programs has been inadequate to ensure high-quality instructional services for the growing number of ELLs. While NCLB provides an authorization level of \$750 million, Title III has been cut or level-funded, receiving only \$669 million in FY 2006. To keep pace with the growth of ELLs attending K-12 schools, NCLR recommends a funding level of \$900 million for FY 2007 and further increases in subsequent years to keep pace with the growth in the ELL student population.
- ▶ **The President and Congress should increase federal support for Parent Assistance Programs.** Testing and accountability are at the heart of NCLB, but parents are the backbone of the law. Yet, many parents are largely unaware of the rights and responsibilities they have under NCLB, and the Administration has requested zero dollars for Parent Assistance Programs every year since enactment of the law. NCLB simply cannot work unless it provides parents the supports they need to take advantage of the opportunities NCLB presents and to fulfill their responsibilities under NCLB. Rather than be eliminated, this basic tenet of fostering parental engagement should be reinforced by funding Parent Assistance Programs at \$100 million, including \$25 million for LFICs for FY 2007.
- ▶ **The U.S. Department of Education should increase its investment in the development of assessments for ELLs.** NCLB authorizes funding for the development of assessments. While most of the funding goes directly to states, the Department reserves some funds to award competitive grants to enhance assessments. NCLR supports the Department’s efforts to allocate some of these discretionary funds toward the development of English-language development assessments for ELLs. However, NCLR believes it is important to increase this investment and reserve a specific allotment for ELL content-area assessments and accommodations.
- ▶ **States should ensure fiscal equity in their education finance systems, with adequate inclusion of resources for ELLs.** While the federal investment in ELLs must be increased, states must “step up to the plate” and ensure that they are providing adequate resources for the education of ELLs.

## CONCLUSION

NCLR believes that NCLB is an important step in the right direction and that the law holds considerable promise for closing the achievement gap between ELLs and their English-proficient peers. It is imperative that all key stakeholders work together to perfect, not discard, NCLB's accountability framework. The alternative is a school system with little accountability for student outcomes, and one that is ill-prepared to help a significant proportion of the current and future student population master academic coursework and graduate with a high school diploma that prepares them for college and the workplace.

The Latino student population, of which ELLs are a significant proportion, is one of the largest and fastest-growing subgroups in our nation's schools and which lags behind non-Latinos in most achievement measures. Given these demographic and statistical trends, NCLR

believes that state and district accountability systems not only must include ELLs, they must be implemented in a way that effectively closes the existing academic achievement gap for ELLs. If accountability and assessment systems fail to work for ELLs, who make up 10% of the public school population, they will fail to work for most public schools.

Nonetheless, to date, NCLB implementation with respect to ELLs has failed to live up to the law's promise. The National Council of La Raza hopes to work with Congress, the White House, community groups, and other stakeholders to improve public schools by strengthening NCLB. This issue brief identifies a series of steps required to realign NCLB's implementation with its stated goal of leaving no child behind. We hope that it serves to spur discussion on reauthorization of this law and that those conversations focus on ELL students.



## ENDNOTES

1. U.S. Census Bureau, *Current Population Survey*, "School Enrollment – Social and Economic Characteristics of Students: October 2003," Table 5. Washington, DC: U.S. Department of Commerce, 2005. Number calculated by NCLR.
2. Padolsky, Daniel, *Ask NCELA No. 1: How many school-aged English language learners (ELLs) are there in the U.S.?* Retrieved (July 9, 2005) Online: <http://www.ncele.gwu.edu/expert/faq/01leps.htm>. Washington, DC: National Clearinghouse for English Language Acquisition and Language Instruction Educational Programs, May 2005. Also, Padolsky, Daniel, *Ask NCELA No. 5: What are the most common language groups for ELL students?* Retrieved (July 9, 2005) Online: <http://www.ncele.gwu.edu/expert/faq/05toplangs.htm>. Washington, DC: National Clearinghouse for English Language Acquisition and Language Instruction Educational Programs, December 2002.
3. Percentage calculated by NCLR using 2002-2003 data from the National Clearinghouse for English Language Acquisition and Language Instruction Educational Programs and U.S. Census Bureau, *Current Population Survey*, October 2003.
4. *Ask NCELA No. 1: How many school-aged English language learners (ELLs) are there in the U.S.?, op. cit.*
5. National Center for Education Statistics, *Characteristics of the 100 Largest Public Elementary and Secondary School Districts in the United States: 2000-2001*, Table 15. Washington, DC: U.S. Department of Education, 2002.
6. *Ask NCELA No. 1: How many school-aged English language learners (ELLs) are there in the U.S.?, op. cit.*
7. National Center for Education Statistics, *National Assessment of Educational Progress (NAEP): Reading and Mathematics*. Retrieved (January 10, 2006) Online: [http://nces.ed.gov/nationsreportcard/nrc/reading\\_math\\_2005](http://nces.ed.gov/nationsreportcard/nrc/reading_math_2005). Washington, DC: U.S. Department of Education, 2005.
8. Rice, Roger, "Adequacy and Civil Rights for Immigrant and ELL/LEP Students," Presentation at the 2005 Education Adequacy Conference. Washington, DC: Campaign for Fiscal Equity, Inc./ACCESS Network, National School Funding Network, Public Education Network, Education Law Center, Rural School and Community Trust, June 2005.
9. Losen, Daniel, "New Research on Special Education and Minority Students with Implications for Federal Education Policy and Enforcement," in Dianne M. Piché, William L. Taylor, and Robin A. Reed, eds., *Rights at Risk: Equality in an Age of Terrorism*. Washington, DC: Citizens' Commission on Civil Rights, 2002.
10. Rivera, Charlene, Charles W. Stansfield, Lewis Scialdone, and Margaret Sharkey, *An Analysis of State Policies for the Inclusion of Accommodation of English Language Learners in State Assessment Programs during 1998-1999*. Washington, DC: Office of Bilingual Education and Minority Affairs, U.S. Department of Education, 2000.
11. Special Data Inquiry Unit, Texas Education Agency, *Final Investigative Report: Houston Independent School District*. Austin, Texas: Texas Education Agency, August 7, 2003.
12. "14 States Ask U.S. to Revise Some Education Law Rules," *New York Times*, March 25, 2004.
13. See, Young, Scott, "No Child Left Behind: Quick Facts 2004-2005." Retrieved (January 10, 2006) Online: <http://www.ncsl.org/programs/educ/NCLB2005LegActivity.htm>. Washington, DC: National Conference of State Legislatures, July 1, 2005; and "States Revive Efforts to Coax NCLB Changes," *Education Week*, February 2, 2005.
14. "Utah Passes Bill to Trump 'No Child' Law," *Education Week*, April 27, 2005.
15. See, for example, "Conn. Attorney General Says NCLB Lawsuit Still a Go," *Education Week*, June 22, 2005; and "Maine Legislative Panel Gives Nod to NCLB Lawsuit," *Education Week*, May 18, 2005.
16. Citizens' Commission on Civil Rights, *Closing the Deal: A Preliminary Report on State Compliance with Final Assessment & Accountability Requirements under the Improving America's Schools Act of 1994*. Washington, DC: Citizens' Commission on Civil Rights, 2001.
17. Albus, Debra, Martha Thurlow, and Kristin Liu, *1999-2000 Participation and Performance of English Language Learners Reported in Public State Documents and Web Sites*. Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes, 2002.
18. *Ibid.*
19. Swanson, Christopher B., *Who Graduates? Who Doesn't? A Statistical Portrait of Public High School Graduation, Class of 2001*. Washington, DC: Education Policy Center, The Urban Institute, 2004.
20. Orfield, Gary et al., *Losing our Future: How Minority Youth are Being Left Behind by the Graduation Rate Crisis*. Cambridge, MA: The Civil Rights Project at Harvard University, 2004.
21. Elementary and Secondary Education Act, *No Child Left Behind Act of 2001*, P.L. 107-110.
22. Menken, Kate, "What are the Critical Issues in Wide-Scale Assessment of English Language Learners?" *NCBE Issue Brief No. 6*. Washington, DC: National Clearinghouse for Bilingual Education, 2000.

23. Office of English Language Acquisition, Language Enhancement and Academic Achievement for Limited English Proficient Students, *Biennial Evaluation Report to Congress on the Implementation of the State Formula Grant Program*. Washington, DC: U.S. Department of Education, 2005.
24. "State Testing of English-Language Learners Scrutinized," *Education Week*, June 15, 2005.
25. Washington Area School Study Council, *Improving Accountability for Limited English Proficient and Special Education Students Under the No Child Left Behind Act*, December 12, 2003.
26. Arkansas Department of Education, "Consolidated State Application Accountability Plan." Retrieved (July 13, 2005) Online: <http://www.ed.gov/admins/lead/account/stateplans03/arcsa.pdf>. April 18, 2003.
27. Abedi, Jamal, "Assessment and Accommodations of English Language Learners: Issues, Concerns, Recommendations," *Journal of School Improvement*, Vol. 3, No. 1, Spring 2002.
28. Virginia Board of Education, "Consolidated State Application: Amended Accountability Workbook." Retrieved (July 13, 2005) Online: <http://www.ed.gov/admins/lead/account/stateplans03/vacs.pdf>. May 26, 2004.
29. Hakuta, Kenji, Yuko Goto Butler, and Daria Witt, *How Long Does it Take English Learners to Attain Proficiency?* (Policy Report 2000-1). University of California: University of California Linguistic Minority Research Institute, 2000.
30. *Biennial Evaluation Report to Congress*, *op. cit.*
31. Abedi, Jamal and Ron Dietel, "Challenges in the No Child Left Behind Act for English Language Learners," *CRESSST Policy Brief 7*. Los Angeles, CA: University of California, National Center for Research on Evaluation, Standards, and Student Testing, 2004.
32. See, Abedi, Jamal, "Assessment and Accommodations for English Language Learners," *CRESSST Policy Brief 4*. Los Angeles, CA: University of California, National Center for Research on Evaluation, Standards, and Student Testing, 2001; and Stansfield, Charles and Charlene Rivera, "Test Accommodations for LEP Students," *ERIC Digest*. Retrieved (July 13, 2005) Online: [http://www.ed.gov/databases/ERIC\\_Digests/ed458289.html](http://www.ed.gov/databases/ERIC_Digests/ed458289.html). College Park, MD: ERIC Clearinghouse on Assessment and Evaluation, 2001.
33. *Biennial Evaluation Report to Congress*, *op. cit.*
34. "Assessment and Accommodations of English Language Learners," *op. cit.*
35. Kindler, Anneka L., *Survey of the States' Limited English Proficient Students and Available Educational Programs and Services, 2000-2001 Summary Report*. Washington, DC: National Clearinghouse for English Language Acquisition and Language Instruction Educational Programs, 2002.
36. Pierce, Jason, "Minimum Size of Subgroups for Adequate Yearly Progress (AYP)," *State Notes: No Child Left Behind*. Retrieved (July 13, 2005) Online: <http://www.ecs.org/clearinghouse/49/76/4976.htm>. Denver, CO: Education Commission of the States, 2003.
37. "Title I – Improving the Academic Achievement of the Disadvantaged; Proposed Rule," *Federal Register*, Vol. 69, No. 121, June 24, 2004.
38. *How Long Does it Take English Learners to Attain Proficiency?*, *op. cit.*
39. "Federal Data Show Gains on Language," *Education Week*, March 23, 2005.
40. Capps, Randy et al., "Promise or Peril: Immigrants, LEP Students and the No Child Left Behind Act," PowerPoint presentation. Washington, DC: The Urban Institute, December 2004.
41. Ruiz de Velasco, Jorge and Michael Fix, "Limited English Proficient Students and High-Stakes Accountability Systems," in Dianne M. Piché, William L. Taylor, and Robin A. Reed, eds., *Rights at Risk: Equality in an Age of Terrorism*. Washington, DC: Citizens' Commission on Civil Rights, 2002.
42. *Ibid.*
43. See, *Creating a Formula for Success: Why English Language Learner students are dropping out of school, and how to increase graduation rates*. New York, NY: Advocates for Children of New York and the New York Immigration Coalition, 2002; Hyman, Elisa, "School Push-Outs: An Urban Case-Study," *Clearinghouse REVIEW: Journal of Poverty Law and Policy*, Vol. 38, January-February 2005, pp. 684-689.
44. Fry, Richard, *Hispanic Youth Dropping Out of U.S. Schools: Measuring the Challenge*. Washington, DC: Pew Hispanic Center, 2003.
45. National Center for Education Statistics, *The Condition of Education 2003*. Washington, DC: U.S. Department of Education, 2003.
46. "Title I – Improving the Academic Achievement of the Disadvantaged; Final Rule," *Federal Register*, Vol. 67, No. 231, December 2, 2002.
47. *Losing our Future*, *op. cit.*
48. Miller, Gifford and Eva S. Moskowitz, *Keeping Score: Can you Judge a School by Its Report Card?* New York, NY: Council of the City of New York, 2004.
49. Economics and Statistics Administration and National Telecommunications and Information Administration, *A Nation Online: How Americans are Expanding their Use of the Internet*. Washington, DC: U.S. Department of Commerce, 2002.
50. "Title I – Improving the Academic Achievement of the Disadvantaged; Proposed Rule," *op. cit.*

51. *Serving Those Most in Need or Not? A Report on the Implementation of the NCLB's Supplemental Education Services in New York City.* New York, NY: Advocates For Children, 2003.
52. "Tutoring Aid Falling Short of Mandate," *Education Week*, February 25, 2004.
53. *Ibid.*
54. "Supplemental Educational Services: Non-Regulatory Guidance." Washington, DC: U.S. Department of Education, June 13, 2005.
55. *Serving Those Most in Need or Not?, op. cit.*
56. "Tutoring Aid Falling Short of Mandate," *op. cit.*
57. "States on Ropes in Finance Lawsuits," *Education Week*, December 8, 2004.
58. U.S. Department of Education, "The Federal Role in Education." Retrieved (January 17, 2006) Online: <http://www.ed.gov/about/overview/fed/role.html?src=ln>. Washington, DC: U.S. Department of Education, April 11, 2005.

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