

**Testimony of Dianne M. Piche, Executive Director, and
William L. Taylor, Chair, Citizens' Commission on Civil Rights**

**U.S. House of Representatives Committee on Education and Labor
Hearing on the Reauthorization of the
Elementary and Secondary Education Act**

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Good afternoon Chairman Miller, Mr. McKeon, Mr. Kildee, Mr. Castle, and members of the Committee. Thank you for the opportunity to testify today on behalf of the Citizens' Commission on Civil Rights and our chairman, William L. Taylor. The Citizens' Commission is a bipartisan organization established in 1982 to monitor the civil rights policies and practices of the federal government and to work to accelerate progress in civil rights. We believe education is a fundamental civil right.¹ We also believe that NCLB represents our nation's most serious commitment at this time to closing our nation's persistent academic achievement gaps – gaps that inflict enduring pain and injury on our most vulnerable children, their families and communities.

We commend Mr. Miller, Mr. McKeon and their staffs for crafting the thoughtful proposals we are all here today to discuss. There are many provisions in the draft that would extend and improve the ESEA reforms initiated under the Improving America's Schools Act of 1994 and Goals 2000. (See Appendix A.) The IASA made the central finding that all children could learn and all but the most cognitively impaired could learn at high levels. Both the IASA and Goals 2000 spurred states to begin setting high standards and expectations for all students and to construct statewide assessment and school improvement systems for equity and accountability. The No Child Left Behind Act in 2001 strengthened the IASA by adding concrete detail and additional safeguards to protect the children most in need -- poor children, children of color, children with disabilities and those who are learning the English language. Both laws were the

¹ Since 1997, the Citizens' Commission has played a "watchdog" role in monitoring implementation and enforcement of key equity provisions in Title I of the Elementary and Secondary Education Act (ESEA), including: standards, assessments, state accountability systems, teacher quality, and public school choice and supplemental services. In 2004, we investigated and reported on early implementation of NCLB's provisions providing a right to transfer *Choosing Better Schools: A Report on Student Transfers Under the No Child Left Behind Act*. In 2006, we released our first report on teacher quality and NCLB, *Days of Reckoning: Are States and the Federal Government Up to the Challenge of Ensuring a Qualified Teacher for Every Student?* See also the following reports of the Citizens' Commission on Civil Rights' Title I Monitoring Project: R. Rothman, et al., *Title I in California: Will the State Pass the Test?* (2002); *Closing the Deal: A Preliminary Report on State Compliance With Final Assessment & Accountability Requirements Under the Improving America's Schools Act of 1994* (2001), Dianne Piché, et al., *Title I in Midstream: The Fight To Improve Schools For Poor Kids* (Corrine Yu & William Taylor, Eds. 1999), Dianne Piche, et al., *Title I in Alabama: The Struggle to Meet Basic Needs* (Citizens' Commission on Civil Rights, 1999). All reports are available at www.cccr.org.

work of a bipartisan group of legislators who placed the national interest above considerations of partisan advantage.

Over the course of the past decade we have seen real academic progress at schools around the country. These are generally schools working under the leadership of a dynamic principal who has assembled a group of teachers and other staff who are committed to the same goals, who work together cooperatively, and who deliver results. Many young teachers have been energized by the process and more experienced teachers have found new motivation. But much more work remains to be done and the work will be very, very hard. And because the work of leveling the playing field in public education is so challenging – in classrooms, school districts, legislatures, and executive agencies -- we have encountered significant opposition to NCLB.

Many of us in the civil rights community have observed that the resistance to NCLB and the difficulty in securing full and effective implementation is not unlike what we have witnessed with other critical civil rights measures. Dianne Piche recently wrote:

NCLB is in many respects the latest in a long line of efforts in the policy and legal arenas to promote equity and opportunity in the public schools, including desegregation cases, the Civil Rights Act of 1964, the original ESEA, and school finance and adequacy cases in the states. How long does it take a cutting-edge civil rights law to “work”? Could a credible argument have been made in 1969, five years after passage of the Civil Rights Act, that the ambitious law was “not working” and therefore ought to be abandoned?²

We urge you at this critical juncture not to turn back the clock on the IASA and NCLB, not to succumb to the pressure of special interest groups and their so-called “fixes” to NCLB. Sadly, in most cases these “improvements” promulgated by many of these interests are in fact measures that would make life easier for the adults – employees and public officials in our public education system – while inflicting hardship and injustice on children and their parents.

It is in this context that we offer the following comments regarding the current draft:

Closing the Teacher Quality Gap

First and foremost, we commend the Committee for proposing a number of new measures that will help close the teacher quality gap between schools with high concentrations of poor and minority students and others. It is folly to believe we can truly close student achievement gaps without first assuring that

² Dianne Piche', *Basically a Good Model*. Fall 2007. Education Next. Accessed 8/26/2007 Available online: <http://www.hoover.org/publications/ednext/9223561.html>

our most vulnerable students are assigned the most qualified and effective teachers. When their schools are systematically shortchanged by inequitable distribution of teachers and other resources – on both inter-district and intra-district bases – they are set up for failure. Contrary to what some commentators have asserted, the equitable assignment of teachers is a national issue, and it is a major civil rights priority in education today. Closing the so-called “comparability” loophole is a major step in the right direction. We urge the Committee to retain and strengthen this provision and to resist measures to weaken it. Moreover, as we reported in *Days of Reckoning*, the vast majority of states have virtually ignored provisions in current law requiring the equitable distribution of experienced and qualified teachers. We believe provisions in the draft will continue and strengthen these requirements.

Assessment and Accountability

Assessment Improvement. The core of reform is a sturdy system of accountability, which in turn depends on valid tools of assessment. There is much that needs improvement in assessment. When some of us first worked on the issue a dozen years ago, we hoped that new forms of assessment would be devised, and that these assessments would measure the analytic and creative abilities of students in addition to basic skills. By and large states have fallen short. Test publishers persuaded many states to take the easier and cheaper course and simply to add multiple choice questions with the assurance that they would be geared to state standards. That is why we are pleased that the draft includes provisions (and funds) to study and develop ways to improve assessments, both for accountability and for diagnostic and instructional purposes.

Additional Subjects. The Commission also has long supported (dating back to Goals 2000 and the IASA) the development of challenging state standards and aligned assessments in all the core subject areas, including, e.g., science and social studies. The draft seeks to encourage states to move in this direction and we believe this can be a positive thing for children in high-poverty schools who are often instructionally deprived across the range of subjects. However, we must emphasize that introduction of additional subjects into the accountability system must not be at the expense of basic reading and math. Despite arguments to the contrary, there is nothing wrong with a system that relies on mastery of grade level standards in English language arts and mathematics as the keystone to proficiency. These are the foundations of learning in many disciplines and many of the most successful schools find ways to integrate these other disciplines into reading and math and vice versa. Consequently, we would urge that these additional subjects be added as “conjunctive” rather than “compensatory” measures at this time.

Multiple Indicators. In an ideal world, states would have developed better assessment systems, including a better system of “multiple measures” as called for in Title I dating back to the IASA in 1994. But they have not. And we find it

hard to believe their record will improve without both additional help and sanctions for noncompliance. For example, in the 1990s, the Citizens' Commission's Title I Monitoring Project found that most states came up short in meeting the requirements of the IASA – to develop six tests in six years that met basic requirements of reliability, validity, alignment with standards and full inclusion. (See *Title I in Midstream*, cited in footnote 1.) Under NCLB, far more assessments needed to be developed and field-tested. But as of today, many states are far from the mark, particularly with respect to the appropriate assessment of ELLs and students with disabilities.

In this context, the notion of introducing “multiple indicators” into state assessment systems at this time is very troubling. First, we believe it would be far better to invest in ensuring that the current state assessments really do the job we want them to do, and for all students. Second, there is little evidence that some proposed indicators have a demonstrated relationship to academic proficiency. While the draft suggests that such a relationship should be shown, these are just the kind of provisions that are widely ignored by states. The law should not permit untested and untried indicators to play any role in determining whether schools and districts have made adequate yearly progress (AYP). And we would urge Members to be particularly mindful of provisions that can be gamed to avoid responsibility. While high school graduation is an appropriate factor to consider, the law should be unambiguous in requiring that high school graduation means readiness for post secondary education, productive work and civic participation.

Transparency and Simplicity. There is one other critical problem with the section on multiple indicators that needs the Committee's attention. Much of the criticism of state accountability systems has rested on the notion that they are far too complicated to be readily accessible to parents or even to teachers who must make judgments based on the results. While we are sure this is unintentional, the cure proposed is worse than the disease. The proposals for multiple measures make the assessment system far more inaccessible than it is right now. It will be almost impossible for a parent or educator to figure out what contribution a score on an additional indicator will make to a determination of a student's proficiency – or for that matter whether a school is achieving basic proficiency in reading and math.³

The complexity problem also affects the new effort to provide gradations of the need for improvement. E.g., while it is commendable to try to segment these schools into those that need the most help (“high priority”) and those that need less help (“priority”) one answer may be allowing the school more flexibility in determining which school operations need the most help and how best to provide it (e.g., through, redesign, restructuring, etc) . We will seek to make recommendations to the Committee for simplification of these provisions.

³ Moreover, as the standards for educational and psychological testing published by the AERA, the APA and the NCME make clear, where multiple predictors are used, regression analysis or other techniques should be used for cross validation. (See Standards, p.21.)

Safeguards. Currently millions of students, and disproportionate numbers of African-American, Latino and other minority students, are left behind because they are not counted by states in their accountability systems. We applaud the committee for including safeguards like a cap on the “n” size and limits on confidence intervals. We do believe, however, that 30 is far too large and recommend a minimum “n” of 20, which has worked and worked well in a number of states.

Growth Models. Other provisions introduce needed flexibility into the system. Both of us served as peer reviewers for the Department of Education on pilot proposals for growth models. We came away with the conclusion that a system which can track a student’s progress over three years and determine whether she is on a trajectory to meeting proficiency is a very promising way of assessing progress toward proficiency. The utility of growth models depends, however, on the development of reliable data systems and on a commitment by the state not to manipulate standards to inflate the proficiency rate. It should also be made clear (as it is not in the staff draft) that these “alternative systems” are not additive but must stand on their own. So just as the “safe harbor” provision cannot be added to a growth model to help a school meet its annual measurement requirement, neither should any “multiple indicators” approved be used in the same way.

Rigorous Standards. The draft nominally requires states to develop college and work-ready standards, but more attention needs to be paid to the timeline for this process and to measures to ensure states really see this challenge through to conclusion. In addition, because the danger of diluting standards to avoid findings of non-proficiency is not limited to growth models, but is endemic, we heartily approve of the draft provision (pp.113-114) calling for a study by the National Academy of Science of the comparative rigor of state standards and assessment. It makes sense to call for recommendation with respect to reducing disparities and developing a common standard. It also makes sense to provide for two year follow-ups and reports by the Secretary. This kind of study, along with keeping an eye on disparities between NAEP scores and state assessments, may help to insure some integrity in state systems even lacking national standards.

Local Assessments. Finally on the question of assessments we come to the single provision in the staff draft that is most destructive of all that the reform effort has sought to accomplish. Section 1125 provides for pilot programs in 15 states to permit “locally developed, classroom-embedded assessments.” These assessments could be used in determining AYP. Since the 1960s, efforts in the courts and in Congress have sought to abolish racially dual school systems, segregation in classrooms, and different standards and expectations for the advantaged and disadvantaged. Yet with a single stroke, this provision for local assessments would wipe out everything the law seeks to accomplish. We could have one set of standards for rural areas and another for urban areas, one for the Bronx and another for Westchester County, one for Boston and another for

Brookline. Nothing in this section seeks to ensure that proficiency in one school district will be the same as proficiency in another. Moreover, given what we know about “gaming the system,” we believe such comparability is highly unlikely.

All of the other efforts to advance educational equity, for example, by strengthening the comparability section and ensuring high quality teachers in high poverty schools, would go for naught. There would be no surer way of shredding an accountability system. This section must be deleted.

Parents’ Rights and Remedies

Right to Transfer and to Supplemental Educational Services. The draft does not include strong provisions enabling parents to obtain relief and help when their children are trapped in substandard schools. In fact, the draft appears to take back rights previously granted to families under NCLB by unreasonably limiting eligibility for choice and SES to a much smaller subset of students in need. These provisions must be restored and strengthened.

The Citizens’ Commission has submitted extensive recommendations to the Committee on improvements to SES and to strengthen public school choice. E.g., we furnished detailed recommendations to the staff and Ms. Piche previously testified before the Subcommittee on these issues on April 18, 2007. We particularly urge the committee to consider our recommendations on how to guarantee real choices and to facilitate inter-district transfers where successful schools in a district do not have capacity for eligible students.

Civil rights organizations were among the original supporters of the right-to-transfer provisions in both IASA and NCLB and have supported the free-tutoring provisions as well. We stress that these provisions were not intended to be “sanctions” or punishments for failing schools (though they can be helpful in improving schools) but as options that provide some modest measure of relief and compensation to students who have been wronged by an inadequate education. Fundamental fairness dictates that if middle-class and wealthy parents have the freedom to move their children from substandard educational environments to ones that offer a better prospect, then the poor should have those same rights for their children. This is especially the case for children who have been assigned to chronically low-performing schools.

Enforcement. It is unrealistic and unfair to rely solely on administrative enforcement at the federal and state levels to vindicate the rights of students when they are violated by recipients of federal funds. Parents and students must be empowered to become full partners in implementing and enforcing the law. CCCR, along with other civil rights organizations, will be submitting recommendations supporting enforcement rights of Title I beneficiaries.

Appendix A

To Testimony of Citizens' Commission on Civil Rights

Provisions Advancing Equal Opportunity

The Miller-McKeon Discussion Draft includes many new provisions that will advance the educational equity goals of the IASA and the NCLB. We are still studying the entire draft and will add to this list in the near future. While some of these proposals will need to be refined or developed further, we would urge the Committee to include them in a reauthorized ESEA and without weakening amendments:

1. A new, dedicated funding stream for high schools, with a focus on challenging and engaging young people and stopping the hemorrhage of high-drop out rates in high-poverty high schools.
2. Clarification that only valid and reliable measures (verified by an independent analysis) of student academic outcomes may be used to calculate adequate yearly progress. The draft also broadens the scope of accountability by permitting states to hold schools and districts accountable for teaching and learning in important core subjects (other than reading and math) like science, social studies and writing.
3. Increased public access to and participation in state and local school reform efforts, including, e.g., the provision of immediate access (on the internet) of all state plans.
4. Alignment of state academic content standards and accountability systems to knowledge and skills needed for post-secondary education and the modern workplace.
5. Support for the development of state longitudinal data systems to track student progress over time.
6. Allowance for states to implement rigorous growth models, following the basic principles and rules for such allowance that were followed by the Secretary in granting this flexibility to several promising states. Includes important safeguards to ensure that growth models do not water down expectations for students.
7. The restoration of the requirement that all students make “substantial and continuous academic improvement,” a key provision in the IASA of 1994 that was deleted in the NCLB of 2001.

8. Maintenance of the “starting point” established under NCLB in 2002, along with the 2013-14 deadline for full proficiency.
9. Statutory limits on confidence intervals, large “n sizes,” percentages of students with disabilities who can be excluded from regular assessments, and other State devices that have operated to leave millions of children – most of whom are minorities – out of the accountability system.
10. Requirement for much-needed and long-overdue statewide policy on research-based assessment accommodations and adaptations. ---- and p.74-5
11. Strengthened reports to parents on individual student achievement. P.72
12. Deadline (2 years) by which states must meet a long-overdue requirement of the IASA of 1994: valid and reliable ways to assess their ELLs and students with disabilities, and penalty for noncompliance thereafter.
13. Assurance that curriculum will be aligned with the standards, with aligned professional development. (86-87)
14. A more sensible approach to accountability that recognizes that some substandard schools need to improve more, others less or in different ways, and the attempt to target interventions and resources to those schools furthest from state standards.
15. Elimination of the loophole in Title I’s “comparability” provision that for many years has enabled wealthy schools to spend more per student on teachers’ salaries and other educational expenditures than poor schools in the same district.
16. Other provisions in Title II, including provisions of the so-called “TEACH Act” which has been endorsed by a broad coalition of civil rights and education organizations.