

**Testimony of Dianne M. Piche
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**Before the U.S. House of Representatives
Committee on Education and Labor**

**Subcommittee on Early Childhood, Elementary and
Secondary Education**

**Hearing on "Supplemental Educational Services Under the No Child
Left Behind Act: How to Improve Quality and Access"**

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Introduction

Good morning Chairman Kildee, Mr. Castle, and members of the Subcommittee.

Thank you for the opportunity to testify today on the supplemental educational services (SES) provisions of the No Child Left Behind Act. The Citizens' Commission commends both this Subcommittee and the full Committee for its diligent, substantive and bipartisan efforts to examine NCLB to determine what's working, what could work better and how to strengthen the law.

The Citizens' Commission on Civil Rights 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.

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*. This past summer, 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?*¹

¹ 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).

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Students Furthest Behind

Today I would like to emphasize my organization's particular concern for the students most "left behind" in public education today. There is a subset of the U.S. K-12 student population in dire need of both help and hope. If nothing else, the reauthorization of NCLB – along with upcoming appropriations debates – ought to focus most on these particular children.

Who are they?

- They are the children who attend the lowest-performing schools in the country.
- Many of their schools have been failing on federal and/or state measures for a number of years – some of them have been deemed substandard since states began assessing students and classifying schools.
- They are children who are one *or more* grades below grade-level in reading or math and have not yet caught up. Many of these children and their parents despair of ever getting caught up
- They attend schools with high concentrations of students from low-income families.
- Their schools tend to be in large urban areas and in a number of isolated rural communities.
- Finally, the students furthest behind tend to be poor *and* in one or more other subgroups reported under NCLB, i.e., they are also nonwhite, disabled, and/or learning English.

What we know about such children is that once they fall behind, if they do not catch up and attain adequate levels of proficiency in reading and math, they will almost certainly fall further behind as they advance through the grades. In short, these are the young people we can identify at high risk of failing to complete high school. They deserve and need real help, and they need it now.

SES: A Safety-Valve for Students

There are many ways in which NCLB is providing hope and help to these and other students, and their families. Today's subject, the supplemental education services provisions, is one tangible and much-needed way. Tutoring is not a new phenomena and millions of children see a tutor each year. It has been the subject of education research and a recent book, "The Tutoring Revolution", by Dr. Edward Gordon, summarizes reports by independent evaluators, concluding that tutoring does improve academic skills as well as the child's own readiness to learn. SES-specific researchers, including Dr. Steven Ross of the University of Memphis (who is currently designing the evaluation plan for eight states,

including Maryland), further validate that one-on-one and small group tutoring are among the more effective means of helping struggling students to get caught up to their appropriate grade level.

In adding SES to Title I, Congress expressed its belief that extra tutoring, after-school and summer programs, along with the right to transfer to a better school, would provide a “safety valve” for students in persistently low-performing schools:

Supplemental educational services represent a refreshing approach to the provision of Title I services. For the first time, Title I dollars would follow the child from the low performing school to a private provider of educational services. These services provide an important ‘safety valve’ for students trapped in failing schools. Specifically, under section 1116(d)(1), low income families that have children attending schools designated for restructuring would have the opportunity to select a private provider to provide supplemental educational services to their children. Parents would select from a list of providers that has been approved by the State educational agency. Once the parents select the provider, the parent then notifies the LEA of their choice, and the LEA then works out an arrangement to pay for the services, as well as develops a statement of specific performance goals for the student, how the student's progress will be measured, and a timetable for improving the student's academic achievement.

House Report on H.R. 1, 107-63 at 285-6.

Despite this clear Congressional intent, one criticism of the law we hear frequently is that choice and SES have not turned out to be effective tools for school improvement. Other critics refer to these provisions as “sanctions” leveled against low-performing schools. I would like to set the record straight: these provisions are neither systemic remedies nor punishments. Both choice and SES were supported by civil rights organizations, including the Leadership Conference on Civil Rights, the nation’s oldest and largest civil rights coalition. The view then, and now, is that choice and SES provide parents with individual options, remedies for their own children’s misfortune of having had to attend substandard schools. They are not NCLB’s systemic remedies, though in some cases they will have a positive impact on a school system. At the same time, too, we want to emphasize that permitting a child to obtain a better education – either by transferring to a better school or by obtaining extra help with reading or math – is hardly a punishment for families who are eligible and are able to exercise their rights to these options under the law. If anything, it is compensation for having been assigned to a school that – for whatever reason – was not working for their child.

SES, along with choice, is also an important equity provision, which can level the educational playing field between low-income families and their more affluent neighbors. We know that middle and upper-income families can always select and purchase something better for their own children when the public education system lets them down. In a modest way, NCLB empowers families in poverty to do the same for their children.

Implementation and Enforcement Challenges

It is axiomatic in public education that the bad news always seems to outnumber and outweigh the good news. When parents are satisfied, when schools are doing well, we don't see many newspaper headlines or public acclamations. The SES program is no exception. When I was asked to testify today, I wrote to some of my colleagues involved with SES and was amazed at the enthusiasm and good news they shared with me about programs across the country. For example:

- Recent studies published by Los Angeles Unified School District, Chicago Public Schools, Pittsburgh and the State of New Mexico, all show positive impact on students achievement levels following SES tutoring.
- A study commissioned by Education Station, a large national provider, found significant gains by participating students, including very low-achievers, in Minneapolis, East St. Louis and Denver. The Denver results also showed gains for ELL students. While, we would recommend that these results be verified by third-party independent evaluations, it is notable that other industry-sponsored studies of their services also point to significant gains.
- Finally, research by Dr. Ross of the University of Memphis and other studies indicate high levels of parent satisfaction with NCLB tutoring services.

Unfortunately, not all the news about SES is good. While parents are generally satisfied and research points to benefits of tutoring and other supplemental services that provide extended learning time, overall results to date are mixed. Shortfalls in the areas of coordination, implementation, oversight, quality-control, evaluation and enforcement all contribute to less-than-optimal outcomes for students and have been documented by the GAO and others. For example:

CCCR study. Last year, the Citizens' Commission conducted a study on participation of eligible students in both choice and SES under NCLB. We sought to follow up on our *Choosing Better Schools* report by surveying a sample of school districts and states on their participation rates in both choice and SES during the 2004-2005 school year. Participation rates reported to us were dismal in most cases and pointed to failures of both implementation and enforcement, at all levels of responsibility – federal, state and local. In short, we learned that schools and districts continue to put up roadblocks to parents' ability to exercise these options under NCLB, with the result that during the 2004-05 school year, less than 1% of eligible students were able to transfer and only 15-16%

of eligible students received supplemental educational services. I have attached to this testimony two tables displaying the data provided by responding school districts, along with sample parent notification letters.

Legal Action. In several communities -- including Birmingham, Los Angeles and Newark -- school system compliance has been so deficient that parents were impelled to take legal action challenging the failure of school officials to notify parents of their options and to provide the choice and/or SES opportunities to which they are entitled under NCLB.

One of the most egregious of the alleged violations occurred in Newark, NJ, prompting a team of lawyers from the Center for Social Justice at the Seton Hall University law school to file a complaint (attached) in federal court. Alberta Green, the first of three plaintiffs in this case and the President of the Newark Parents Association, was never notified that her Grandchild was attending a school designated as failing for five consecutive years or of her right to school choice or SES. Ms. Green only learned about SES when another parent showed her the request form.

At [the school's] failure to respond to Ms. Green's SES Request Form, Ms. Green verbally inquired about SES for her grandchild. [The school] failed to respond to her additional request. As a result, her grandchild continued to attend a Failing School while being denied the educational benefits he would have derived from receiving SES. Ms. Green was only able to obtain SES for her grandchild through the intervention of legal counsel. (Newark Parents Association v. Newark Public Schools, p. 15-16)

Federal Role. As reported elsewhere, including in the GAO report, federal oversight has been variable, owing in part to several different points of contact and authority in the Department. We welcome Secretary Spellings' May 15, 2006 letter to Chief State School officers and her commitment to support effective implementation and enforcement of SES. We particularly welcome federal attention to the problems that have been documented with regard to the timing, form and content of parental notification. As a practical matter, too, we welcome her strong message to states that they must begin more aggressive monitoring and enforcement of the law with respect to their school districts.

Recommendations

First, it is our view that many of the difficulties and challenges with respect to SES quality and access can be resolved without Congressional action. Like many other aspects of NCLB, the law works well when all parties act in a spirit of cooperation and good will. In fact, many sound practices are already codified in the law and regulations. And the enforcement tools states and the Department need to ensure compliance are already available under federal and state law in most cases.

Second, while we all work to promote better implementation and enforcement, there is some room to improve the law itself. The Committee has received numerous recommendations from the Administration, the Aspen Institute's NCLB Commission, and numerous organizations and associations. As a guiding principle, the Citizens' Commission would recommend only those changes to NCLB that will a) maintain and strengthen provisions giving parents meaningful choices to improve their children's learning, b) maintain and improve a diversity of offerings so that parents can choose services that best meet their child's needs and circumstances, and c) show reasonable promise of increasing the number of children served, particularly those with the greatest academic needs.

Among the recommendations we endorse, we would particularly urge support of the following:

- 1) **No Rollover of SES Funds.** NCLB should codify presumption – based on best practices in exemplary school districts – that the full 20% set aside is warranted to meet choice and SES needs. Consequently, LEAs should be prohibited, in most cases, from rolling over unexpended SES/choice funds from one year to the next unless the funds are carried over for additional SES funding for summer sessions or programs during the following year. Prior to a district being allowed to roll over funding, the law should require the State to review the district's implementation of SES and, at a minimum, require the district to have 75 percent of parents affirmatively “opt-out/opt-in” of choice or SES services, in order to demonstrate the opportunity was in fact provided.
- 2) **Enhanced monitoring and enforcement of SES and choice** provisions by federal and state education agencies. We particularly support proposals that would permit parents to enforce provisions of NCLB (See Aspen Institute), those that would require enhanced data collection, and those that would lead to increased civil rights monitoring. In order to evaluate compliance, it will be important for LEAs and SEAs to collect and report on all the categories included in the CCCR surveys: a) Number of eligible students, b) Number and % eligible applying, c) Number and % eligible actually receiving services, and d) Number and % of students eligible, applying and receiving services who are English Language learners and/or students with disabilities.
- 3) **Additional per-pupil costs.** Congress should consider differentiating the needs and costs of special populations of eligible students with unique needs, including students with documented disabilities, English Language learners and students who are two or more years below grade level. Congress might then consider amending the cost-reimbursement structure for SES providers to ensure that students who need more intensive services or uniquely-trained tutors are able to get the services they need to catch up.

- 4) **Community-based organizations.** Often CBOs are in the best position to reach out to the most vulnerable children and families. CBOs - including community centers, boys' and girls' clubs, faith-based organizations, YM/WCAs, after-school programs and refugee assistance centers – should be encouraged (and assisted with capacity-building where appropriate) to become or to partner with SES providers. In addition, we should encourage coupling tutoring with other after-school activities to provide a more comprehensive latch-key service for younger children.
- 5) **School-site-based SES.** Using school facilities after school for tutoring is often most convenient for parents, yet we are aware of reports that districts may place unreasonable restrictions on access. We recommend allowing SES providers access to public school buildings on the same terms and conditions that other community groups enjoy. Similarly, Congress should examine barriers to school site access, as well as the benefits of locating SES programs in school buildings, community centers, housing projects and other places where children are likely to be, or can get easily after school.
- 6) **Transportation and other costs.** In order to encourage optimal enrollment, Congress should consider permitting reasonable expenditures for recruitment, administration and transportation.
- 7) **Home-school-provider coordination.** SES programs will work best when all three sets of “teachers” in a child’s life are working together: the parents, the school and the SES personnel, and observation noted by the August GAO report. While there is nothing in the law prohibiting such coordination – which is simply good practice – Congress should consider whether ongoing communication and coordination should be explicitly required, particularly with respect to the school-provider relationship. In addition, proposals should be considered that would enable states to authorize **third-party entities** (e.g., local government agencies outside the school system or nonprofit organizations) to coordinate recruitment and delivery of services (both SES and choice) among multiple parties and stakeholders. In our experience in the desegregation context, delegating recruitment, coordination and administration to a competent third party can maximize parent participation and choice and help ensure efficient management of the program among multiple providers and payees. For example, in St. Louis, the Voluntary Interdistrict Coordinating Committee (VICC) has managed a successful choice program involving up to 13,000 students and multiple school districts in St. Louis city and county.
- 8) **School Districts “In Need of Improvement.”** Under most circumstances, a district in “needs improvement” status should have enough on its agenda to manage the improvement of the regular school

day program it is delivering. The Citizens' Commission believes LEAs in need of improvement should be permitted to become SES providers only if they can make a persuasive case to the Secretary that they have the capacity to provide high-quality services and that provision of SES would not detract in any way from the LEA's urgent systemic and school improvement needs. The Leadership Conference has a comparable recommendation.

Conclusion

The most urgent need in public education today is to provide help and restore hope to the millions of students trapped in failing schools. By strengthening and reauthorizing NCLB, we can continue to provide hope and help to the students who are furthest behind. Supplemental educational services continue to be an important "safety valve" for children from low-income families who attend sub-standard schools.

For more information, please contact Coleen Yamamura-Clark with the Citizens' Commission on Civil Rights at cyclark@cccr.org or 202-659-5565. Testimony of Dianne Piché will be available on our website: www.cccr.org