

Reauthorization of the Elementary and Secondary Education Act of 1965

Submitted to:

U.S. House of Representatives Committee on Education and the Workforce

Submitted by:

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Introduction

My name is Delia Pompa; I am the Vice President for Education at the National Council of La Raza (NCLR). NCLR is a private, nonprofit, nonpartisan organization established in 1968 to reduce poverty and discrimination and improve opportunities for the nation's Hispanics. As the largest national Hispanic civil rights and advocacy organization in the U.S., NCLR serves all Hispanic nationality groups in all regions of the country through a network of nearly 300 Affiliate community-based organizations.

In my role as Vice President for Education at NCLR, I oversee programs ranging from early college high schools and charter schools to pre-kindergarten and early childhood education. My work on public school reform has been shaped by more than 30 years of experience leading local, state, and federal agencies and national and international organizations. I began my career as a kindergarten teacher in San Antonio, and went on to serve as a district administrator in Houston and as Assistant Commissioner of the Texas Education Agency. I was formerly the Director of Education, Adolescent Pregnancy Prevention, and Youth Development for the Children's Defense Fund, and Director of the Office of Bilingual Education and Minority Language Affairs at the U.S. Department of Education. In particular, I am focused on helping academic institutions understand and respond to the needs of underserved children and their teachers.

NCLR appreciates the Committee's efforts to hold this hearing on the reauthorization of the Elementary and Secondary Education Act of 1965. In particular, we are pleased that the Committee has placed the education of Latino and English language learner (ELL) students at the center of the reauthorization process. One immediate benefit of the No Child Left Behind Act (NCLB) is that it has brought to light issues concerning ELLs.

As a preliminary matter, I would like to state unequivocally that NCLR believes that English is critical to success in this nation and strongly supports English-language acquisition for ELLs and all individuals who are limited English proficient (LEP). The fact is, NCLR and its Affiliate Network are in the business of helping LEP children and adults acquire English-language skills. For example, about half of our nearly 300 Affiliates provide some English-language acquisition services. In addition, NCLR's network of more than 90 charter schools serves a diverse group of students, including ELLs.

NCLR has also invested a great deal of time in shaping the No Child Left Behind Act and in working toward more effective implementation of that law, which we see as a linchpin for the future of Latino students, nearly half of whom are ELLs. NCLR worked with Congress to craft a new bilingual education law, Title III of NCLB, which has clear accountability for helping ELLs acquire proficiency in English and keep up with their English-proficient peers in reading, math, and science. NCLR worked with Congress to make sure that parents are part of the education process, particularly immigrant parents who are not English proficient. NCLR has been working in collaboration with the Department of Education to improve implementation of the ELL provisions of NCLB and to fight back efforts to erode accountability for ELLs. We hope to continue working with Congress to strengthen – not discard – NCLB's accountability provisions. NCLR's publication, *Improving Assessment and Accountability for English Language Learners*

in the No Child Left Behind Act, provides a roadmap for NCLB reauthorization. I would like to submit a copy of that issue brief for the record.

NCLR has also worked to inform the Latino community about NCLB, particularly the parents of students most likely to benefit from NCLB, yet most likely to be ignored. Specifically, NCLR has conducted workshops and trainings for Latino, limited-English-proficient, and farmworker parents. In the rural community of Woodburn, Oregon, we conducted a day-long training which attracted about 100 farmworker parents of ELLs. Their deep commitment to the education of their children was clear. Their main challenge in fulfilling their role under NCLB – to hold their local schools accountable for improving educational outcomes – is their lack of English proficiency.

While NCLR is interested in every aspect of the reauthorization, in my testimony today I will focus on the ELL provisions of the discussion draft released on August 28, 2007. Specifically, I will provide (1) selected statistics on ELL and Hispanic students; (2) a brief history of the education of ELL students; (3) a brief discussion of popular myths about NCLB as it relates to ELL students; and (4) an examination of key provisions of the discussion draft.

Hispanic Education Statistics

NCLB reauthorization represents a critical juncture for the Latino community and public schools in general. Over the past decade, Latino students have had a great impact on the demographics of our nation's public schools. This can be characterized by Hispanic students' large numbers, rapid increase, and growing presence in schools, particularly in "nontraditional" states. For example, in 2005, Hispanics accounted for more than 10.9 million students enrolled in U.S. public schools (preK-12th grade). Between 1993 and 2003, the proportion of Hispanic students enrolled in public schools increased from 12.7% to 19%, while the proportion of White students decreased from 66% to 58%. Between 1972 and 2004, the proportion of the Hispanic student population increased in the South from 5% to 17%, in the Midwest from 2% to 7%, and in the Northeast from 6% to 14%.

In addressing education reform, NCLR focuses on ELLs because of their growing presence in public schools. During the 2004-2005 academic year, there were an estimated 5.1 million ELL students enrolled in public schools, representing 10.5% of the total public school student enrollment and representing a more than 56% increase between 1994-1995 and 2004-2005. Nearly four-fifths (79%) of ELL students are native Spanish-speakers. Nearly half (45%) of all Latino children in our nation's public schools are ELL students.

ELLs are often in urban schools and large districts. An estimated 91% of ELL students live in metropolitan areas. In fact, nearly 70% of the nation's ELLs are enrolled in 10% of metropolitan-area schools; a quarter of the 100 largest school districts have an ELL population of at least 15%. However, their numbers are growing in "nontraditional states." Between 1995 and 2005, states which experienced the largest growth rates in ELLs included South Carolina (714%), Kentucky (417%), Indiana (408%), North Carolina (372%), and Tennessee (370%).

Thus, if NCLB and public schools do not work for Latinos and ELLs, we do not have a functioning public school system in the U.S. Unfortunately, public schools have not worked thus far for the nation's Hispanic children.

History of Hispanic Education

Over the past five years, awareness of the low achievement of ELLs has increased significantly. The harshest critics of NCLB choose to blame the law for this. What is seldom mentioned is that NCLB has simply highlighted conditions that have been in existence for decades with little notice or consternation. When I was teaching 30 years ago, Latino students did not receive the rigorous coursework and effective instruction needed to succeed in school and go on to college. If they were ELL, the situation was grimmer. The same applied 20 years ago, and ten years ago. Yet, despite receiving less than a quality education, many of these students received passing grades and eventually graduated from high school. Simply put, the quality of education available to poor, minority children in the inner cities over the last several decades has not come close to that of White children or children in suburban communities. Poor, minority, and ELL kids have not been getting a fair shake. And there was no public will to change the educational experiences of these children because there was no shared responsibility.

Certainly, the current state of Hispanic education should be a cause of concern. Some key statistics illustrate this: Latinos do not have equitable access to preschool education. In 2005, 66% of Black children and 59% of White children participated in center-based preschool education programs, while only 43% of Hispanic children participated. (National Center for Education Statistics, "Enrollment in Early Childhood Education," *The Condition of Education 2006*. Washington, DC: U.S. Department of Education, 2006, Table 2-1, p. 2.)

Minority students, including Latinos, are not provided with rigorous coursework. According to a study by Achieve, Inc., while 74% of minority girls want to enroll in advanced courses, only 45% of their schools offer these courses. Similarly, two-thirds of minority boys have an interest in taking advanced mathematics courses, but fewer than half attend schools that offer these courses. ("If We Raise Standards in High School, Won't Students Become More Disengaged?" Fact Sheet. Washington, DC: Achieve, Inc., 2005. <http://www.achieve.org/node/595>)

The results speak for themselves. Too few Latinos and African Americans graduate from high school. Only 53% of Hispanic students and 50% of African American students who enter 9th grade will complete the 12th grade and graduate with a regular diploma, compared to 75% of White students. (Orfield, Gary, Daniel Losen, Johanna Wald, and Christopher B. Swanson, *Losing Our Future: How Minority Youth Are Being Left Behind by the Graduation Rate Crisis*. Cambridge, MA: The Civil Rights Project at Harvard University. Contributors: Advocates for Children of New York and Civil Society Institute, 2004, p. 2.)

Myths and Facts on NCLB and ELLs

While NCLB has not changed these conditions, it has forced the public school system to begin addressing them and to put plans in place to improve educational opportunities for ELLs. Thus, NCLB strongly believes that any changes to NCLB during this reauthorization must maintain a

focus on high standards, assessment, accountability, parental involvement, teacher quality, and adequate resources. Unfortunately, five years after NCLB's enactment, there are many myths about the requirements of the law, and about the Hispanic and ELL student population. These include:

"ELL students are causing schools to fail to meet adequate yearly progress (AYP) benchmarks." The truth is, according to the NCLB Commission, ELLs are not the sole reason schools are identified as not making AYP.

"Most Hispanic and ELL students are immigrants. Thus, it is unfair to hold schools accountable for their academic achievement." The truth is, the vast majority of Latino children are U.S. citizens by birth; 88% of Latinos under 18 are U.S.-born. Another 1% are naturalized citizens. About 10% of Latino children under 18 are noncitizens. According to the Urban Institute, in 2000, only 1.5% percent of elementary schoolchildren and 3% of secondary schoolchildren were undocumented immigrants. Fifty-nine percent of elementary school ELL students are U.S.-born children of immigrants, or second generation, and 18% are children of U.S. native-born parents, or third generation.

"Five years is just not enough time for states, districts, and schools to put in place appropriate assessments for ELLs." The truth is, the assessment requirements have been in place since 1994 under the Improving America's Schools Act (IASA).

There is also a great deal of confusion about regulations promulgated by the U.S. Department of Education related to recently arrived ELLs. The Department's ELL regulation allows states to exempt recently arrived LEP students from one administration of the states' reading/language arts assessment. It requires states to include recently arrived LEP students in state mathematics assessments, but allows them not to count in adequate yearly progress determinations the scores of recently arrived LEP students on state mathematics assessments. Myths related to the rule abound and include:

"The Department's new rule is unfair because schools currently have a three-year exemption for newly arrived ELLs." The truth is, there was no exemption of ELLs prior to this rule.

"Because of this new rule, ELLs are being forced to take English-language tests after one year." The truth is, states can still test ELLs in other languages, consistent with 1111(b)(3)(C) of NCLB.

Most pernicious of all is the notion that "too many 'out-of-school challenges,' including poverty, family education, and limited English proficiency make it impossible for schools to close the achievement gap. Thus, NCLB's accountability system is unfair." The fact is, many of these challenges are being addressed through programs such as Head Start, 21st Century Community Learning Centers, the State Children's Health Insurance Program, housing counseling, adult education, Even Start, and so on. Schools are not in this alone.

Key ELL Provisions in the August 28, 2007, Education and Labor Committee Discussion Draft

Overall, the discussion draft moves the ball forward significantly with regard to NCLR's principal goal of ensuring that the heart of NCLB – its foundation of standards, assessments, and accountability – is strengthened, not discarded, for ELLs. Specifically, we support the following provisions:

Including “former-LEP” students in the ELL category for three additional years (Page 31, Section 1111(b)(2)(C)(v)(II)(dd)). This provision give schools additional flexibility in allowing ELL students who have acquired English proficiency to be counted as ELL for an additional three years for AYP purposes. This increases the likelihood that students in the ELL category will make AYP and does not punish schools which are helping students acquire English. NCLR recommends keeping the language as it is in the discussion draft.

Codification of the Department of Education's regulation allowing a one-year exemption from the reading test on recently arrived ELLs (Page 54, Section 1111(b)(2)(Q)). This regulation represents common-sense policy. Schools should have one year to provide instruction and other academic supports for recently arrived ELLs in order to demonstrate whether or not their programming is effective. Any less time would be unfair to schools, and more time would place ELLs in jeopardy of falling through the cracks. NCLR recommends keeping the language as it is in the discussion draft.

Requiring the development and use of appropriate ELL assessments two years after the renewed NCLB is effective, with the use of appropriate interim measures for certain ELLs, and with 25% withholding of funds for noncompliance (Pages 84-85, Section 1111(b)(10)). As noted above, states have had since implementation of the 1994 law to develop appropriate assessments. Over the past five years, many states have made great progress toward complying with this aspect of the law and should be in a position to meet this requirement. The draft allows states to use interim measures for those ELLs at the lowest levels of English proficiency and use their progress in acquiring English as an interim AYP measure. This provides states with sufficient flexibility until they develop appropriate assessments. Principals, teachers, and students should not be asked to wait any longer for appropriate assessments. NCLR recommends keeping the language as it is in the discussion draft.

The “special rule” requiring certain states to develop native-language assessments (Pages 81-85, Section 1111(b)(6)). This provision is intended to provide districts and schools with a significant number of ELLs from one language group appropriate assessments for ELLs, in this case a native-language assessment. NCLR supports this provision because research has consistently shown that some standardized tests may not effectively assess the academic achievement of ELLs. The National Research Council found that some ELL test scores may be inaccurate if ELL students take tests in English, concluding that “when students are not proficient in the language of assessment (in this case, English), their scores on a test will not accurately reflect their knowledge of the subject being assessed (except for a test that measures only English proficiency).” However, we would recommend changing the legislative language and the policy to clarify that 10% refers to 10% of all students in a state:

“(C) SPECIAL RULE.—Consistent with subparagraph (A) and State law, in the case of any State where at least 10 percent of all students ~~who are English language learners~~ share one language, the State shall—

(i) develop or make available to such students native language or [dual language] assessments that are valid, reliable, and aligned to grade level content and student academic achievement standards; and

(ii) assess such students using such assessments, if such assessments validly and reliably measure the content and instruction such students received.”

The requirement in the state plan for professional development in the use of accommodations (Page 87, Section 1111(b)(11)(G)). This provision ensures that teachers in states which will use accommodations as part of their assessment system will be prepared to adjust their instruction accordingly and use accommodations appropriately. NCLR recommends keeping the language as it is in the discussion draft.

Conclusion

The debate over how best to educate the nation’s ELLs has shifted dramatically since passage of NCLB. Before 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. In addition, many activists and policy-makers argued about what was the best method for helping ELLs acquire English. NCLB has correctly changed the debate on ELLs to a simple question: How can schools improve the academic achievement and attainment of ELLs? NCLB gives states, school districts, and schools the power to design their own responses to this question with one caveat: They will be held accountable for helping ELLs learn English and meet the same reading and mathematics standards as other children. States and districts will have to report to parents on their progress, and parents will hold schools accountable if they cannot meet their goals.

In addition, as Congress moves forward with NCLB reauthorization, we are concerned that members will seek to conflate the education of ELLs and Hispanic children with immigration policy. We would like to set the record straight before the debate begins. As noted above, the vast majority of Latino children are U.S. citizens by birth. Thus, any attempts to use immigration – legal or unauthorized immigration – to exclude or marginalize ELL and Hispanic students are without basis or merit, must be soundly rejected by Congress, and should be described clearly and without hesitation as an attack on the principle of inclusion which has characterized the U.S. and the American people.

Congress must move the ball forward on education reform. Given the demographics noted above, the future of our public school system rests on its ability to prepare the growing number of Hispanic and ELL students for college and the workplace. For Latinos and ELLs, inclusion in NCLB represents the best opportunity to achieve this. This means that the heart of NCLB – its foundation of standards, assessments, and accountability – must be strengthened, not discarded.

Over the past five years, there has been great momentum behind closing the achievement gap. There is unprecedented public will among educators, policy-makers, and the nation as a whole to

ensure that every child has a quality education. Gutting NCLB's accountability measures would be a major setback for members of Congress, advocates, educators, parents, and students hoping to build on this public will to improve our public schools.