Good Morning. My name is Luis O. Reyes, speaking as the Coordinator of the Coalition for Educational Excellence for English Language Learners (CEEELL), in New York City. Thank you for the opportunity to testify at the New York State Assembly Education Committee’s public hearing on LEP/ELL student assessment policy in New York State under the Federal No Child Left Behind Act.

The federal Department of Education in June of this year found that New York State’s methods for testing the annual progress of students with limited English proficiency did not comply with the No Child Left Behind (NCLB) law and that the state must correct the problems within a year or risk losing $1.2 million in federal school aid. Commissioner Richard Mills was told that the New York State English as a Second Language Achievement Test “is not sufficiently comparable to the regular English language arts assessment” for use as “a substitute language arts assessment.”

At a June 16, 2006 meeting of the Committee of Practitioners convened by Commissioner Mills, I asked the Commissioner to consider opposing the federal government’s actions and to seek a continuing exemption from the regular English language arts assessment for all English Language Learners (ELLs) in a U.S. school system for less than three years. Despite the absence of any reputable scientific research justifying testing ELLs after only being here for more than 12 months, the Commissioner took the political position that opposing the USDOE would be futile because “we don’t have a winning hand.”

In fact, Prof. Kate Menken of Queens College, CUNY, wrote the following to the regents on June 19, 2006:
The English Language Arts (ELA) assessment is neither valid, reliable, nor fair for this population of students, particularly when it is attached to high-stakes consequences such as grade promotion, retention, or any other form of accountability. English language learners are far more likely to fail standardized tests like the ELA than native-English speakers due to their limited proficiency in English; nationally, these students score anywhere from 20 to 40 percentage points below native-English speakers. Yet this does not mean that these students are failing to progress in the way they should towards learning the English language. We know from years of research that it takes at least five to seven years, and often even nine years, for a student to acquire English to the level of a native-English speaker as measured on a standardized test in English. This does not indicate that the student or those who educate them are failing; it simply means the students are following a normal process of language learning. They should not be punished for this, and passing this law would unfairly penalize immigrant students who are learning English.

Here are just some of the negative effects you can expect from including English language learners in the ELA exam, particularly before they have had sufficient time to learn English:

- Tests like the ELA and English Regents were never designed to assess English language learners, and are unable to truly measure what these students know and are able to do. Any test in English is first and foremost an English language proficiency exam rather than a measure of content knowledge.

- High-stakes testing, particularly in English, places ELLs at an unfair disadvantage and penalizes them for their lack of English proficiency, keeping these students from opportunities for advancement in school and in their future. ELLs are far more likely than native-English speakers to be retained in grade, barred from graduation or grade promotion, and placed into low-track remedial education programs that are ill matched to their language learning needs when test scores are attached to this sort of decision-making.

- High-stakes testing reduces the quality of education that ELLs receive. Educators working with ELLs are found to “teach to the test” when test scores are attached to high stakes consequences, focusing instruction only on test content and test preparation strategies at the expense of learning. When exams implemented are ones intended for native-English speakers, this is found to result in classroom teaching strategies that are inappropriate for English language learners.

- Testing policies undermine English as a second language and bilingual education programs, teaching strategies, and curricula and practices proven effective from research and years of experience in TESOL and bilingual education.

The New York State English as a Second Language Achievement Test (NYSESLAT) must be included in a fair accountability system for ELLs, as should measures of students' proficiency in their native language. In addition, multiple measures of student achievement such as portfolios, samples of student work, and classroom-based assessments should also be included in an accountability system, as together they are far more likely to offer an accurate picture of what an ELL student knows and is able to do. States such as Delaware are now piloting the use of
portfolios on a wide scale to measure the progress of ELLs, and I hope you would consider doing the same instead.

Action Request:

I urge the legislature to insist that the New York State Board of Regents and the Education Commissioner take appropriate measures to ensure that accountability is based on sound psychometric practices. Every attempt must be made by the NYSED to act responsibly before this policy goes into full effect at great cost to our ELL students throughout the state. Above all, they should not have to pay for mistakes made by the individuals and agencies that are charged with their education.

I urge you to insist that SED that steps immediately to align the NYSESLAT to the ELA standards so that it can be used to fulfill both the proficiency and accountability measures.

2. The Regents and the NYSED should revisit the issue of exemptions to ensure that USDOE does not impose a requirement for all ELLs to take the ELA exam after only one year in an English-speaking school system.

3. Along with the New York Immigration Coalition, I urge the Regents and the SED to reverse the recent decision for this school year to change the English language arts (ELA) exam testing policy for ELL students this year and to instead move to rapidly develop an appropriate assessment for ELLs for the 2007-08 school year.

Thank you for your attention.