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# INSTITUTE FOR LANGUAGE AND EDUCATION POLICY

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September 14, 2007

The Honorable George Miller  
Chairman  
Committee on Education and Labor  
United States House of Representatives  
Washington, DC 20515

The Honorable Howard P. "Buck" McKeon  
Senior Republican Member  
Committee on Education and Labor  
United States House of Representatives  
Washington, DC 20515

The Honorable Dale E. Kildee  
Chairman  
Subcommittee on Early Childhood,  
Elementary and Secondary Education  
United States House of Representatives  
Washington, DC 20515

The Honorable Michael Castle  
Senior Republican Member  
Subcommittee on Early Childhood,  
Elementary and Secondary Education  
United States House of Representatives  
Washington, DC 20515

Dear Sirs:

Thank you for the opportunity to comment on the Miller-McKeon discussion draft for reauthorization of Title III of the Elementary and Secondary Education Act (ESEA). We submitted our concerns and proposals regarding Title I in our letter of September 5. Attached to today's correspondence you will find specific amendments we are proposing for both of these titles.

The Institute for Language and Education Policy is a nonprofit organization founded in 2006 and dedicated to promoting research-based policies for serving English language learners (ELLs). Our members include educators, researchers, parents, university professors, graduate students, teachers-in-training, and other advocates for ELLs in 36 states and several foreign countries.

As noted previously, we applaud the leaders of the House Committee on Education and Labor for addressing a number of flaws in the No Child Left Behind Act (NCLB) that have created serious obstacles to effective schooling for ELLs. We support a number of your proposed changes for Title III, including a strengthened emphasis on professional development, support for cultivating students' academic proficiency in more than one language, and improvements in data collection to ensure the accuracy of state formula grants for ELLs and immigrant students.

Generally speaking, we are pleased with the Miller-McKeon proposals for Title III – with three caveats. First, we believe the accountability provisions should be made compatible with those we are proposing for Title I (see attachment), which rely on the civil-rights principles of *Castañeda v. Pickard*. Briefly stated, such an accountability system would strive to ensure equal educational opportunities for ELLs by incorporating inputs (resources, program designs, staff qualifications, etc.) as well as outputs (multiple achievement indicators).

Second, the Miller-McKeon proposals fall short of ensuring the level of funding needed to address the academic difficulties of a long-neglected group of children. Enrollments of ELLs and immigrant students are growing dramatically, nearly doubling each decade at the national level and expanding even more rapidly in many states. Serving these students effectively requires substantial investments in staff training and technical assistance. Yet Title III has been essentially level-funded since 2002; resources must be increased significantly to keep pace with changing demography. In addition, the arbitrary cap on spending for “national activities” (at 6.5 percent of overall Title III appropriations) has cut federal support for professional development by more than 60 percent since the passage of NCLB, at a time when numerous states and school districts are struggling to find teachers qualified to serve ELLs. Finally, Title III eliminated fellowships for graduate study, as provided under previous versions of ESEA, which had long served as a key source of researchers and teacher-trainers in ELL education. We have submitted several recommendations on ways to correct these problems.

Third, the Miller-McKeon proposals do not go far enough in addressing a widely expressed concern among educators. Although Title III threatens schools with sanctions when ELLs fail, the law offers no guidance on how to help these students succeed. At present, the U.S. Department of Education places little emphasis on disseminating effective pedagogical programs and practices for ELLs, assistance that is desperately needed in many school districts. To fill the vacuum, we propose to create an Academic Excellence Demonstration Project that is designed to share the scientific knowledge and practical experience that currently exist on effective classroom approaches in teaching ELLs. As with the National Professional Development Project, these awards would be made to local educational agencies, state education agencies, and institutions of higher education on a competitive basis, using a peer-review process to ensure quality control.

Again, we are pleased to hear that your discussion draft is a “work in progress,” and respectfully ask that our recommendations for amendments receive serious consideration. If you require further information, please do not hesitate to contact me at the address below. Thank you.

Sincerely,



James Crawford, President  
Institute for Language and Education Policy  
bilingualed@starpower.net

**Proposed Amendments to Title I and Title III of the  
No Child Left Behind Act**

**By the Institute for Language and Education Policy**

**September 14, 2007**

**Title I (proposed changes to the Miller-McKeon discussion draft)**

**Valid and Reliable Assessments for English Language Learners**

p. 70 – strike (VI) and insert:

(VI) the inclusion of English language learners, who shall be assessed in a valid and reliable manner and in the language and form most likely to yield accurate data on what such students know and can do in grade level academic content areas. Until such students have achieved sufficient English language proficiency to be assessed validly and reliably in English, they shall be provided reasonable accommodations or alternate assessments, such as portfolios or native-language content assessments, provided that such accommodations and assessments have been determined to be valid and reliable. Consistent with section 1111(b)(2)(Q), only valid and reliable assessments and/or accommodations shall be used for measuring the adequate yearly progress of English language learners.

p. 82 – strike (B) and (C) and insert:

(B) REQUIREMENT.—For English language learners who receive core content instruction in the native language, each State shall make every effort to develop and use native-language content assessments that are valid, reliable, and aligned to grade level content standards, and may request assistance from the Secretary if linguistically accessible academic assessment measures are needed.

pp. 84-85 – strike (10)(A-C) or remove all references to English language learners.

**Accountability and Adequate Yearly Progress**

p. 27 – After “Each State plan shall demonstrate that the State has developed and is implementing a single, statewide accountability system,” insert:

except as provided in (2)(C)(II)(dd) and subparagraph Q.

p. 31 – strike (dd) and insert:

(dd) English language learners, except that adequate yearly progress shall be determined using methods and criteria that are designed by state and/or local educational agencies and that are specifically tailored to the unique needs and capabilities of these students, including:

(1) multiple progress measures in English language acquisition and academic content, such as portfolios, native-language assessments, promotion and graduation rates, and class grades, that are based on tracking the academic growth of individual students, or cohorts thereof, rather than on the aggregate scores of all English language learners in a school or school district; and

(2) performance targets that are reasonable and appropriate both for English language learners and for the pedagogical methodologies employed in teaching these students, according to the judgment of experts in consultation with state education agencies.

p. 54 – strike (Q) and insert:

(Q) ACCOUNTABILITY FOR ENGLISH LANGUAGE LEARNERS.

- (i) VALID AND RELIABLE ASSESSMENTS. – English language learners shall be included in assessments aligned to state standards in reading/language arts, mathematics, or science, only if such assessments, with or without accommodations, have been determined to be valid and reliable for measuring the academic learning of these students at their level of English- and/or native-language proficiency. Until such conditions are met, the performance of English language learners on state content assessments shall not be publicly reported, nor shall it be used for purposes of calculating adequate yearly progress.
- (ii) APPROPRIATE ACCOUNTABILITY. – A State plan shall explain how its accountability system for English language learners conforms to the three-step test established by *Castañeda v. Pickard* (648 F.2d 989; 5th Cir. 1981), and applied by the Office of Civil Rights in the U.S. Department of Education, to determine whether school districts are meeting their obligations to these students under the Equal Educational Opportunity Act of 1974 (20 U.S.C. §1703(f)). The three-step test shall include the following:
  - a. English language learners shall be provided an instructional program (or programs) that is designed on the basis of scientifically valid principles, according to the opinion of experts in the field of second-language education;
  - b. such programs shall be provided adequate financial resources, appropriate school materials, trained personnel, and other support designed to ensure the program’s effectiveness; and
  - c. such programs shall be evaluated at reasonable intervals to determine whether students are making adequate progress in academic content and English language acquisition, as determined by multiple indicators, and if students fail to make such progress, the program shall be improved and/or restructured.

p. 67 – After “the participation in such assessments by all students,” insert:

except as provided in subclause (VI) and section 1111(b)(2)(Q).

**Technical Assistance**

p. 83, lines 15-16 – strike “but, except as provided in paragraph (6)(C)” and insert:

and assistance in developing appropriate program models, curriculum designs, and instructional practices, but

**Title III (proposed amendments to current law)**

**Funding increases to compensate for growth of ELL population since 2001-02**

Sec. 3001 – Strike (a)(1) and insert:

(a) AUTHORIZATIONS OF APPROPRIATIONS.—

(1) IN GENERAL.—Subject to subsection (b), there are authorized to be appropriated to carry out this title, \$1,500,000,000 for fiscal year 2008 and such sums as may be necessary for each of the 5 succeeding fiscal years.

(b), CONDITIONS ON EFFECTIVENESS OF PARTS A AND B. – Strike \$650,000,000 and insert \$1,000,000,000

Sec. 3111(c)(a)(C) RESERVATIONS AND ALLOTMENTS – Strike (1) and insert:

(1) RESERVATIONS.—From the amount appropriated under section 3001(a) for each fiscal year, the Secretary shall reserve—

(A) one percent or \$10,000,000 of such amount, whichever is greater, for payments to eligible entities that are defined under section 3112(a) for activities to serve Native American and Alaska Native students, as approved by the Secretary, consistent with this subpart;

(B) 0.5 percent of such amount for payments to outlying areas, to be allotted in accordance with their respective needs for assistance under this subpart, as determined by the Secretary, for activities, approved by the Secretary, consistent with this subpart; and

(C) 15 percent or \$125,000,000 of such amount, whichever is greater, for the National Professional Development Project under section 3131;

(D) 15 percent or \$125,000,000 of such amount, whichever is greater, for the Academic Excellence Demonstration Project under section 3132; and

(E) one percent of such amount to be allotted to support the operation of the National Clearinghouse for English Language Acquisition and Language Instruction Educational Programs and other national activities under section 3303, except that not more than 0.5 percent of such amount shall be reserved for evaluation activities conducted by the Secretary.

### **National Professional Development Project**

Sec. 3131 – Insert (and renumber subsequent provisions):

(2) for awarding fellowships for masters, doctoral, and post-doctoral study related to the instruction of English language learners in such areas as teacher training, program administration, research and evaluation, and curriculum development, and for the support of dissertation research related to such study;

### **Academic Excellence Demonstration Project**

After Sec. 3131 – Insert new section:

Sec. 3132. ACADEMIC EXCELLENCE DEMONSTRATION PROJECT.

The Secretary shall award grants to local education agencies or consortia of local education agencies, who may enter into collaborative agreements with institutions of higher education and/or state education agencies, to promote the adoption and implementation of instructional programs that have shown exceptional promise in meeting the academic needs of English language learners and in enabling such students to meet challenging state standards.

#### (a) APPLICATIONS.

- (1) Each local education agency or consortium desiring an award under this section shall submit an application to the Secretary in such form, at such time, and containing such information and assurances as the Secretary may reasonably require.
- (2) The Secretary shall use a peer review process, using effectiveness criteria that the Secretary shall establish, to review applications and make awards under this section for grants of up to five years, not to exceed \$500,000 per year.
- (3) Awards will be made annually, beginning not later than the second school year following the effective date of this Title.

(b) USE OF FUNDS. Funds under this section shall be used for activities to enhance the capability of States and local educational agencies to provide high-quality academic programs for English language learners through the dissemination of scientific knowledge and practical experience with other entities. Such activities may include:

- (1) completing the development, research, and evaluation of programs of academic excellence, including program models that foster heritage language development as well as English acquisition;
- (2) organizing professional development activities;
- (3) sharing instructional strategies, curricula, materials, and locally developed assessments; and
- (4) supporting professional networks of educators and researchers concerned with the academic achievement of English language learners.