



June 2, 2008

Mr. Richard L. Smith
Office of English Language Acquisition
U. S. Department of Education
400 Maryland Avenue, S.W.
Room 10087, Potomac Center Plaza
Washington, DC 20202

Re: *National School Boards Association (NSBA) Comments on U.S. Department of Education Proposed Interpretations, Title III of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (NCLB)*

Dear Mr. Smith:

The National School Boards Association (NSBA), representing over 95,000 local school board members through state school board associations across the nation, is pleased to offer our comments regarding the Proposed Interpretations of Title III of the Elementary and Secondary Education Act of 1965. While the proposed interpretations address the annual administration of English language proficiency (ELP) assessments to limited English Proficient (LEP) students served by Title III, these proposed interpretations fall short of addressing the flaws of the current law and cannot be viewed as a substitute for the revisions that are necessary to be included in a full reauthorization of NCLB.

Further, in anticipation of a reauthorization during the 111th Congress, the Department is urged to refrain from establishing any new requirements for States and local school districts that are unnecessary, costly, or would result in burdensome administrative requirements that have little, if any, impact on improving academic performance.

The following comments are offered:

1. Annual ELP Assessments of LEP Students.

Proposed Interpretation

All LEP students would be required to be assessed annually on each and every one of the following language domains: speaking, listening, reading, and writing; even when a student has achieved proficiency in one or more of the domains. States would not be able to “bank” the proficient scores of LEP students in a particular domain until the student is proficient in all of the domains and exits the LEP subgroup.

NSBA Comment

NSBA objects to this interpretation. Once a student has scored proficient or above in one of the domains, there is no reason to continue the assessment in that domain. Instead, the focus should

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be on strengthening the instruction in the remaining domains in which the student is not proficient. The intent of the legislation was to ensure that the student is being assessed annually until he/she is proficient in these domains. Continuing to assess the student in the domain(s) he/she is already proficient would be unnecessarily costly and would take away instruction time that can be devoted to other domains. Therefore, NSBA recommends that the Department revise its proposed interpretation and grant LEAs the authority to determine whether a student should be assessed in a particular domain once he or she has scored at or above the proficient level. If the LEA believes that subsequent assessments of the same domain(s) would be beneficial, such re-assessments could be scheduled, but not mandated by the federal government.

2. Use of Annual ELP Assessments Scores for AMAOs 1 and 2

Proposed Interpretation

With regard to AMAO 1, States would be allowed to base their student performance expectations and accountability (AMAO 1) targets for progress on assessment results derived from either (1) separate student performance levels or scores or performance levels or scores in each of the language domains, or (2) a single composite score or performance level derived by combining performance scores across domains, so long as such a composite score can be demonstrated to be a valid and effective measure of a students' progress in each of the English language proficiency domains. Additionally, States would be allowed to determine their AMAO 1 targets based on progress in one or more of the language domains, rather than requiring student progress separately in each and every one of the language domains, so long as the targets provide meaningful progress toward attaining English language proficiency.

With regard to AMAO 2, States would be allowed to base their student performance expectations and accountability targets for attainment on assessment results derived from either 1) separate student performance levels or scores in each of the language domains or (2) a single composite score or performance level derived by combining performance scores across domains, provided that such a composite score can be demonstrated to be a valid and effective measure of a student's proficiency in each of the English language proficiency domains.

Therefore, students must reach, and AMAO 2 targets must reflect a proficient level of performance in each and every domain of English required to be evaluated under Title III.

NSBA Comment

NSBA supports this interpretation.

3. Students Included in Title III Accountability

Proposed Interpretation

All LEP students served by programs under Title III must be included in all AMAO targets, calculations, and determinations. Additionally, all LEP students attending public schools within a State or subgrantee's jurisdiction must be included in the targets, calculations, and determination for purposes of determining whether a State or Title III subgrantee meets AMAO 3. Students who have not been enrolled in the same school or LEA for a full academic year, and those students who have "recently arrived" status may continue to be excluded.

NSBA Comment

NSBA supports this interpretation so long as students who are new arrivals and who have not been enrolled in the full academic year are continued to be excluded from Title I accountability, therefore from AMAO3.

4. Exclusion of LEP Students “Without Two Data Points” From AMAO 1

Proposed Interpretation

All LEP students served by Title III must be included in measurements of student progress in English (AMAO 1) regardless of whether they have participated in at least two consecutive and consistent annual administrations of an ELP assessment required under section 3113 of the ESEA. Therefore, all LEP students served by programs under Title III would have to be included in AMAO 1 determinations. If a state does not have the requisite two years of data for some LEP students, it would be allowed to propose an alternate method of calculating AMAO1 for these students.

NSBA Comment

NSBA supports allowing states to use an alternate method to calculate AMAO1 for students who do not have two data points in the language assessments. However, we recommend that the State should be allowed to determine a minimum time for enrollment before the student is included in AMAO1.

5. Attainment of English Language Proficiency and “Exiting” the LEP Subgroup

Proposed Interpretation

There must be consistency between State definitions of English language proficiency for the purposes of setting targets for AMAO 2 (increasing the number or percentage of LEP students attaining English language proficiency) and the criteria that States use to determine that students from the LEP subgroup no longer need services under Title III and are prepared to exit the LEP subgroup for Title I accountability purposes.

NSBA Comment

NSBA acknowledges the intent of the Department to ensure consistency. However, NSBA believes that there are students who are determined to reach basic proficiency in the English language, but who still need additional services to strengthen their language skills. In such a case, these students should continue to be classified as LEP to ensure their access to the extra services needed. NSBA recommends that LEAs be given the discretion to determine when students exit the LEP program even though the student has reached language proficiency based on language assessments as reported under AMAO2.

6. Use of Minimum Subgroup Sizes in Title III Accountability

Proposed Interpretation

States would be permitted to apply minimum subgroup sizes to AMAO calculations and determinations under Title III, consistent with the minimum subgroup size policies that the State applies to AYP determinations for the LEP subgroup that have been approved by the Department. The Department is not encouraging States to adopt minimum subgroup size policies for purposes of complying with Title III’s accountability provisions, and does not believe it will be necessary for most States to adopt such policies. Further, the State would not

allow different subgrantees to use different minimum subgroup sizes for Title III accountability purposes.

However, under this proposed interpretation, a State would be permitted to apply the same minimum subgroup size policies for Title III accountability purposes as the State applies to AYP determinations for the LEP subgroup.

NSBA Comment

NSBA supports this interpretation as long as States continue to have discretion to determine the N-size.

7. All LEP Students, Adequate Yearly Progress, and AMAO 3

Proposed Interpretation

LEAs and subgrantees would be required to use the same criteria for determining AYP under AMAO 3 as they use to determine AYP for the LEP subgroup at the LEA level under Title I. Therefore all LEP students in the subgrantee's jurisdiction would have to be included in AMAO 3 targets and calculations. For States, all LEP students, whether or not they are specifically served by Title III programs, would have to be included in AMAO 3 targets and calculations.

NSBA Comment

NSBA supports this interpretation so long as students who are new arrivals and who have not been enrolled in the full academic year continue to be excluded from Title I accountability, therefore from AMAO3.

8. AMAOs and the Use of Cohorts

Proposed Interpretation

States may, but are not required to establish "cohorts" for AMAO targets, calculations, and determinations; and may set separate AMAO targets for separate groups or "cohorts" of LEP students served by Title III. However, such options may be based only on the amount of time such students have had access to language instruction educational programs (not current language proficiency, time in the United States, etc.)

NSBA Comment

NSBA supports this interpretation, recognizing that the emphasis must shift to whether or not the student has access to language educational programs.

9. Determining AMAOs for Consortia

Proposed Interpretation

States must hold "consortia" accountable for meeting AMAOs like any other eligible subgrantees. However, States will be allowed discretion on whether to treat subgrantees that consist of more than one LEA as a single entity or as separate entities for the purpose of calculating each of the three AMAOs required under Title III. While States would be encouraged to adopt a uniform approach, for States that choose not to have a uniform approach, the Department would require a State to demonstrate that its method for calculating AMAOs for

consortia would hold all consortia accountable for ensuring that LEP students acquire English language skills and make AYP.

NSBA Comment

NSBA supports this interpretation that would give States discretion.

10. Implementation of Corrective Actions Under Title III

Proposed Interpretation

All states must make determination for each of the three AMAO targets for every Title III subgrantee in the state for every school year. Not meeting any one of the three AMAO targets in a given school year constitutes not meeting AMAOs (subgrantees must develop an improvement plan after not meeting the AMAOs for two consecutive years). States are required to annually inform their subgrantees when they do not meet the state's AMAO targets and must communicate that information to the parents of LEP students served by Title III.

NSBA Comment

NSBA understands the need for a subgrantee or LEA to develop an improvement plan after failing to meet AMAO targets for two years. However, we do not agree that missing one of the three AMAO targets one year should constitute not meeting AMAOs, nor do we believe that the statute requires it. NSBA recommends that the Department allow states to determine how subgrantees should be identified for not meeting AMAO targets for two consecutive years (with the Department's approval) taking into consideration whether progress is made on the AMAOs from one year to the next and/or whether a subgrantee misses the same AMAO target two years in a row.

NSBA supports the proposed interpretation that states must annually inform their subgrantees when the subgrantees do not meet AMAO targets and communication that information to parents of LEP students.

Thank you for the opportunity to comment. Questions regarding our comments may be directed to Katherine Shek, Legislative Analyst, at 703-535-1627, or by e-mail, kshek@nsba.org.

Sincerely,



Michael A. Resnick
Associate Executive Director