



Teachers of English to Speakers of Other Languages, Inc.

A Global Education Association Founded in 1966

June 2, 2008

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

RE: Comments on Proposed Notice of Interpretations (*Federal Register*: May 2, 2008, Volume 73, Number 86)

Dear Mr. Smith:

As Executive Director of Teachers of English to Speakers of Other Languages, Inc. (TESOL), a global education association representing English language educators worldwide, I am writing to you to offer TESOL's comments on the Proposed Notice of Interpretations for Title III of the No Child Left Behind Act of 2001 (NCLB).

Incorporated in 1966, Teachers of English to Speakers of Other Languages, Inc. (TESOL), is a global association for English language teaching professionals headquartered in Alexandria, Virginia, USA. TESOL encompasses a network of approximately 60,000 educators worldwide, consisting of more than 14,000 individual members and an additional 45,000 educators within the 100 plus TESOL affiliate associations. Representing a multifaceted academic discipline and profession, TESOL offers members a variety of resources on current issues, ideas, and opportunities in the field of English language teaching, including an annual convention, regarded as the foremost professional development opportunity for English language educators worldwide.

Due to the complexity of NCLB, and the unique challenges of serving diverse populations of English language learners, States have needed clear guidance and technical assistance from the U.S. Department of Education. TESOL appreciates the efforts of the Department to clarify many of the provisions of Title III in order to provide some consistency to its implementation by States in order to comply with the "bright line" principles of NCLB.

Before offering its comments and feedback on the ten proposed interpretations offered by the Department, TESOL would like to take the opportunity to first urge the Department to develop a standard rubric—consistent with research in second language—to be used in evaluating States' standards and assessments for English language proficiency equally. Unfortunately, there have been discrepancies across States in these matters, which should not be the case.

Secondly, the Department should remind States that federal grant money to fund NCLB programs is intended to *supplement* and not *supplant* State and local educational funds. Basic ESL/bilingual programs that comply with *Lau v. Nichols* and *Castaneda v. Pickard* must be funded through State and local funds. To use Title I, Part A; Title I, Part C; or Title III to fund the basic English as a second language (ESL) or bilingual program violates the supplanting requirement in Title I (for the Title I programs) and section 3115 (g) for the Title III program. Many States are allowing basic

ESL/bilingual programs to be funded with Title III funds in contravention of the law. The Department's ambiguous language appears to approve such use of Title III funds for that purpose.

The following are TESOL's specific comments on each proposed interpretation:

### **1. Annual English Language Proficiency Assessments of ELP Students**

*The Secretary proposes to interpret Title III to require that all LEP students be assessed annually with an assessment or assessments that measure each and every one of the language domains of speaking, listening, reading, and writing. States may not exempt a student from an annual ELP assessment in any domain. In other words, States may not "bank" the proficient scores of a LEP student in a particular domain until such time as the student is proficient in all domains.*

In principle, TESOL has no general objection to this interpretation, as TESOL supports the goal of ensuring that English language learners achieve academic language proficiency in English across all language domains (listening, speaking, reading, and writing). However, in practice, there are often significant issues of lost instructional time due to test preparation and administration, which are unnecessary when students reach proficiency in certain skill areas. This is a real concern for many ESL and bilingual education instructors, especially those who may be the sole individual in a local education agency (LEA) to administer these proficiency tests.

### **2. Use of Annual ELP Assessment Scores for AMAOs 1 and 2**

*The Secretary proposes to interpret Title III to allow States to base their student performance expectations and accountability (i.e., AMAO targets) 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, so long as such a composite score can be demonstrated to be a valid and effective measure of a student's progress and proficiency in each of the English language proficiency domains. The Secretary also proposes to interpret Title III to allow States 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 for meaningful progress toward attaining English language proficiency.*

Again, in principle, TESOL has no general objection to this interpretation, as TESOL supports the goal of ensuring that English language learners achieve academic language proficiency in English across all language domains (listening, speaking, reading, and writing). In fact, academic language proficiency is often defined as the level of language proficiency required to engage in meaningful academic discourse across all subjects and content areas, which requires all language domains.

TESOL does have serious concerns with how this interpretation may be implemented by States, especially with the proposal to allow States to determine Annual Measurable Achievement Objective (AMAO) 1 targets based on progress in one or more of the language domains. Meaningful academic discourse in other subjects requires academic language proficiency in all language domains. Using a composite score, or basing targets on one or two language domains, may mask lower levels of proficiency in other language domains. This is critical in determining future academic success for English language learners, especially if a student has higher proficiency in speaking and listening than in reading and writing.

Meaningful progress in English involves all the language domains; thus AMAO 1 criteria should be based on all language domains. If a composite score is to be developed, then the reading and writing domains should be weighted more heavily.

### **3. Students Included in Title III Accountability**

*The Secretary proposes to interpret Title III to require that all LEP students served by programs under Title III be included in all AMAO targets, calculations, and determinations. The Secretary also proposes to interpret the Title III provisions as requiring that all LEP students attending a public school within a State or subgrantee's jurisdiction be included in targets, calculations, and determinations for purposes of determining whether a State or subgrantee meets AMAO 3 (AYP for the LEP subgroup).*

For AMAO 1 and AMAO 3, TESOL does not have any general objections to this interpretation. However, as Title III funds can be used for a variety of purposes which can either directly or indirectly serve English language learners, TESOL is concerned with the terminology "students served by programs under Title III." This terminology is ambiguous, and could be interpreted to mean only those students who are served directly by programs under Title III. As alluded to earlier in these comments, many States are inappropriately using Title III resources to fund basic ESL/bilingual programs, and thus may interpret this terminology to mean only those programs. TESOL suggests using "Title III funded district" instead of "students served by programs under Title III" in order to avoid any confusion or ambiguity.

In addition, TESOL strongly urges the Department to provide clear guidance on how newly arrived students are to be included in the calculations for AMAO 1 and AMAO 3.

TESOL does have major concerns with this interpretation as it relates to AMAO 2, however. By definition, AMAO 2 is based on the number of students who have gained English language proficiency. How are students newly arrived and at the lowest proficiency levels to be included in the calculation of AMAO 2? Research has shown that students at the lowest levels of English language proficiency are not expected to reach proficiency in simply one or two years. Weighting or indexing the performance of students at the lowest proficiency levels may provide a workable solution.

### **4. Exclusion of LEP Students Without Two Data Points From AMAO 1**

*The Secretary proposes to interpret Title III to include all LEP students served by Title III 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. For students who have not participated in two consecutive and consistent annual administrations of an ELP assessment, the Secretary would require States to propose to the Department an alternative method of including such students in AMAO 1.*

TESOL has major concerns with this proposed interpretation. First, AMAO 1 is based upon progress in language proficiency, and so two data points are needed in order to demonstrate progress by students. These two data points must be comparable and in alignment; if they are not, this will affect validity and reliability. Allowing the use of alternatives as the first data point (such as a placement test) will either call into question the validity and reliability of the assessment of progress, or require substantial validation work by States, which may include changing their definition of "progress."

Second, this interpretation does not take into account the real-world issues regarding the mobility of the English language learner population. In addition to those students who are newly arrived to U.S.

schools, many English language learner students change schools or districts during the academic year. In order for progress to be assessed, sufficient time is needed to occur between the two data points. Thus, how are students who are newly arrived in a school expected to demonstrate progress?

TESOL strongly urges the Department to further study this policy issue before implementing this proposed interpretation.

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

*The Secretary proposes to interpret Title III to require that a State’s definition of English language proficiency for the purposes of setting targets for attaining English language proficiency (AMAO 2) be consistent with and reflect the same criteria the State uses to determine that students from the LEP subgroup no longer need language education services under Title III and will exit the LEP subgroup. In other words, a student considered to have attained proficiency in English for the purposes of AMAO 2 would also be considered ready to exit the LEP subgroup.*

TESOL’s primary concern with this interpretation is how it will be implemented by States. As many States use multiple criteria to determine when a student has achieved proficiency in English and no longer receives services, this interpretation may result in States using a single test score to determine proficiency. This interpretation may also require some States to revise their definition of “proficiency” in English.

In addition, this interpretation fails to address those former LEP students who have exited the subgroup under Title I, but whose progress is still tracked for accountability (i.e., those former LEP students whose scores are still counted within the LEP subgroup.) Additional clarification is needed for those students who are in this “monitored” status.

## **6. Use of Minimum Subgroup Sizes in Title III Accountability**

*The Secretary proposes to interpret Title III to permit a State to apply the same minimum subgroup size to AMAO calculations and determinations that the State applies to adequate yearly progress (AYP) determinations and that have been approved by the Department in the State’s Accountability Workbook for purposes of Title I of the ESEA.*

This proposed interpretation appears to be at odds with the third proposed interpretation, which requires all English language learners be included for all AMAOs under Title III. If a district has fewer English language learners than the minimum subgroup size (or “n” size), will those students not be counted in that district’s AMAOs?

In addition, the minimum subgroup size for reporting adequate yearly progress (AYP) under Title I serves a completely different purpose than the reporting required for AMAOs under Title III. The mixing of these two provisions in this way may cause much confusion at the district and local level.

## **7. All LEP Students in AYP Subgroup Included in AMAO 3**

*The Secretary proposes to interpret Title III to require that the LEP students included in AMAO 3 must be the same LEP students referred to in section 1111(b)(2)(B) of Title I of the ESEA – that is, all students counted in the LEP subgroup for AYP purposes. The setting of targets, calculations, and determinations of AMAO 3 would not be limited to, or based on, only the expectations for LEP students served by Title III*

TESOL has no objection to this proposed interpretation. However, while the definition of limited-English-proficient students is provided for under Title IX, Part A of NCLB, some States make distinctions between groups of students for which other programs exist (e.g., migrant, Native American). TESOL urges the Department to provide a clear rubric for States and districts to use to determine who should be included in the LEP subgroup under Title I.

## **8. AMAOs and the Use of Cohorts**

*The Secretary proposes to interpret Title III to mean that (a) States may, but are not required to, establish “cohorts” for AMAO targets, calculations, and determinations; and (b) States may only set separate AMAO targets for separate groups or “cohorts” of LEP students served by Title III based on the amount of time (for example, number of years) such students have had access to language instruction educational programs. States may not set separate AMAO targets for cohorts of LEP students based on a student’s current language proficiency, time in the United States, or any criteria other than time in a language instruction educational program.*

For this proposed interpretation, TESOL supports allowing States to use cohorts for AMAO targets under Title III, and allowing States to set separate targets for cohorts. However, **TESOL is strongly opposed to the limitation that States may only set cohorts based on the amount of time in language instruction educational programs.** Length of time in a language instruction educational program is only one criterion used to develop the multifaceted profile of student performance and ability. To base a cohort solely on this criterion is pedagogically unsound; it is important to get a complete picture in order to get a more accurate assessment of student progress.

Moreover, limiting cohorts to length of time in a language instruction educational program does not take into account the mobility of English language learners, many of whom will change schools or districts during the academic year. Program methodologies differ significantly among districts (never mind between States), and thus will have a significant impact upon the progress of students who are changing schools. In these cases, the length of time in a language instruction educational program becomes a completely arbitrary figure, such as length of time lived in the United States.

Basing cohorts on language proficiency levels is backed by research to be much more pedagogically sound, as it allows States and districts to set specific targets and goals for students tied to their level of language proficiency. States should have the flexibility to establish cohorts using multiple criteria, including language proficiency level, age, and grade, as long as it can be demonstrated to be backed by scientifically based research.

## **9. Determining AMAOs for Consortia**

*The Secretary requires States to hold consortia, like any other eligible subgrantee, accountable for meeting AMAOs. However, the Secretary proposes to interpret Title III to allow States discretion about whether to treat subgrantees that consist of more than one LEA as a single entity or separate entities for the purpose of calculating each of the three AMAOs required under Title III.*

TESOL supports the additional flexibility provided for in this interpretation.

## **10. Implementation of Corrective Actions Under Title III**

*The Secretary reinforces the proper implementation of the accountability requirements of Title III, which requires that all States make determinations for each of three AMAO targets – making progress in English proficiency (AMAO 1), attaining English proficiency (AMAO 2), and AYP for the*

*LEP subgroup (AMAO 3) – for every Title III subgrantee in the State for every school year. The Secretary also clarifies State responsibilities to communicate with parents and subgrantees about AMAO results.*

TESOL has no objections to this proposed interpretation, although TESOL urges the Department to provide more details and further clarification on how it intends to enforce corrective action, particularly in regard to compliance issues.

**Conclusion**

It is TESOL's hope that these proposed interpretations indicate a significant effort by the Department to further improve the educational achievement of English language learners in the United States through additional technical assistance. TESOL appreciates the opportunity to offer its comments on the proposed interpretations, and hopes the Department will carefully consider these comments when drafting the final interpretations.

TESOL welcomes the opportunity to be of further assistance to the Department of Education and the Office of English Language Acquisition. If you have any questions regarding TESOL's comments, or need any additional information, please contact John Segota, Advocacy and Professional Relations Manager, at 703-518-2513 or by e-mail at [jsegota@tesol.org](mailto:jsegota@tesol.org).

Sincerely,



Charles S. Amorosino, Jr.  
Executive Director

CC: Shelley Wong, President  
Mark Algren, President Elect  
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