ESEA Reauthorization Policy Brief

Speakers of Other Languages
Who Are Limited in Their English Proficiency

James J. Lyons, Esq.
April 2011
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Speakers of Other Languages Who Are Limited in Their English Proficiency

James J. Lyons, Esq.—Policy Consultant

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Introduction

This policy brief calls for fundamental changes in the current Elementary and Secondary Education Act respecting the education of children who speak languages other than English (SOL) but who are limited in their English proficiency (LEP). These students have been the fastest growing segment of our youth population for more than a decade and will continue to be in the foreseeable future. Yet they remain the most educationally needy and poorest served student group in our schools. The No Child Left Behind Act (NCLB) actually worsened their educational condition, and many of the policy changes being advocated in the name of education reform either ignore or are likely to exacerbate their plight.

The legislative changes recommended in this policy brief are based upon proven principles of learning and successful educational practice. During the last forty years, some public schools, and even some entire school districts, have implemented instructional programs which enable non-English-language-background students to excel. Many of these successful instructional programs were initiated with the federal assistance and support provided by the Bilingual Education Act which was repealed by the NCLB. All of these successful programs recognize, respect, and build upon the language abilities and cultural knowledge children learn at home. None of these programs measure success by the speed at which they teach students English as a second language; all measure success by how well they teach not only English but also all academic content. None of these programs rely exclusively on standardized reading test scores to measure their success. Instead they also look at additional real-life measures including rates of school attendance, school graduation, college admission, college completion, and successful employment to determine whether their programs are effective or in need of improvement.

Before presenting the recommended changes in the ESEA, this policy brief describes: the SOL-LEP student population; the academic performance of LEP students; how most schools fail SOL-LEP students; federal civil rights laws and court decisions respecting the educational rights of LEP students; fundamental research findings regarding the effective instruction of LEP students; the impact of NCLB on LEP students; and the proper role of language and culture education in a new ESEA.

SOL-LEP Student Population

More than 11 million students — one of every five — enrolled in U.S. schools speak a language other English which they have learned from their parents, guardians, family members and care-givers. These children are termed SOLs, or speakers of other languages. More than half of these students are classified as limited-English-proficient (LEP), meaning that their limited English skills prevent full and effective participation in educational programs designed for English proficient students.

LEP students are the fastest growing segment of the U.S. student population. Between 1997 and 2007, LEP student enrollment in grades K-12 grew by 53% while the overall student population increased by only 8%.
This recent population growth is projected to continue, and the U.S. Department of Education predicts that LEP students will constitute one-quarter of the nation’s K-12 school enrollment by 2025.\(^6\)

The following tables\(^7\) present three different perspectives of the LEP student population in selected states: absolute size, relative share, and growth rate over the 10 year period 1998-2008.

### Table 1. Top 12 States with the Largest ELL Enrollment, 2007-2008

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>United States</td>
<td>49,914,453</td>
<td>5,318,164</td>
<td>10.7</td>
<td>3,470,268</td>
<td>53.2</td>
</tr>
<tr>
<td>California</td>
<td>6,275,445</td>
<td>1,526,036</td>
<td>24.3</td>
<td>1,406,166</td>
<td>8.5</td>
</tr>
<tr>
<td>Texas</td>
<td>4,674,832</td>
<td>701,799</td>
<td>15.0</td>
<td>507,262</td>
<td>38.4</td>
</tr>
<tr>
<td>Florida</td>
<td>2,666,811</td>
<td>234,934</td>
<td>8.8</td>
<td>243,766</td>
<td>-3.6</td>
</tr>
<tr>
<td>New York</td>
<td>2,765,435</td>
<td>213,000</td>
<td>7.7</td>
<td>219,868</td>
<td>-3.1</td>
</tr>
<tr>
<td>Illinois</td>
<td>2,112,805</td>
<td>175,454</td>
<td>8.3</td>
<td>136,186</td>
<td>28.8</td>
</tr>
<tr>
<td>Arizona</td>
<td>1,087,447</td>
<td>166,572</td>
<td>15.3</td>
<td>112,522</td>
<td>48.0</td>
</tr>
<tr>
<td>Nevada</td>
<td>429,362</td>
<td>134,377</td>
<td>31.3</td>
<td>30,425</td>
<td>341.7</td>
</tr>
<tr>
<td>North Carolina</td>
<td>1,458,035</td>
<td>106,180</td>
<td>7.3</td>
<td>28,709</td>
<td>269.8</td>
</tr>
<tr>
<td>Washington</td>
<td>1,030,247</td>
<td>94,011</td>
<td>9.1</td>
<td>56,921</td>
<td>65.2</td>
</tr>
<tr>
<td>Virginia</td>
<td>1,230,857</td>
<td>89,968</td>
<td>7.3</td>
<td>24,876</td>
<td>261.7</td>
</tr>
<tr>
<td>Colorado</td>
<td>801,867</td>
<td>82,347</td>
<td>10.3</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Georgia</td>
<td>1,649,589</td>
<td>72,613</td>
<td>4.4</td>
<td>20,944</td>
<td>246.7</td>
</tr>
</tbody>
</table>
Table 2. Top 12 States with Highest Share of ELL Student Enrollment, 2007-2008

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
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</tr>
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<td>1,526,036</td>
<td>24.3</td>
<td>1,406,166</td>
<td>8.5</td>
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<tr>
<td>New Mexico</td>
<td>329,459</td>
<td>60,624</td>
<td>18.4</td>
<td>71,429</td>
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<tr>
<td>Arizona</td>
<td>1,087,447</td>
<td>166,572</td>
<td>15.3</td>
<td>112,522</td>
<td>48.0</td>
</tr>
<tr>
<td>Texas</td>
<td>4,674,832</td>
<td>701,799</td>
<td>15.0</td>
<td>507,262</td>
<td>38.4</td>
</tr>
<tr>
<td>Alaska</td>
<td>131,029</td>
<td>17,513</td>
<td>13.4</td>
<td>22,087</td>
<td>-20.7</td>
</tr>
<tr>
<td>Oregon</td>
<td>565,586</td>
<td>65,314</td>
<td>11.5</td>
<td>30,768</td>
<td>112.3</td>
</tr>
<tr>
<td>Colorado</td>
<td>801,867</td>
<td>82,347</td>
<td>10.3</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Hawaii</td>
<td>179,897</td>
<td>17,868</td>
<td>9.9</td>
<td>12,869</td>
<td>38.8</td>
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<tr>
<td>Utah</td>
<td>576,244</td>
<td>52,635</td>
<td>9.1</td>
<td>38,269</td>
<td>37.5</td>
</tr>
<tr>
<td>Washington</td>
<td>1,030,247</td>
<td>94,011</td>
<td>9.1</td>
<td>56,921</td>
<td>65.2</td>
</tr>
<tr>
<td>Florida</td>
<td>2,666,811</td>
<td>234,934</td>
<td>8.8</td>
<td>243,766</td>
<td>-3.6</td>
</tr>
</tbody>
</table>

Table 3. Top 12 States with the Fastest-Growing ELL Enrollment from 1997-1998 to 2007-2008

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>49,914,453</td>
<td>5,318,164</td>
<td>10.7</td>
<td>3,470,268</td>
<td>53.2</td>
</tr>
<tr>
<td>South Carolina</td>
<td>712,319</td>
<td>28,548</td>
<td>4.0</td>
<td>3,077</td>
<td>827.8</td>
</tr>
<tr>
<td>Indiana</td>
<td>1,046,766</td>
<td>46,417</td>
<td>4.4</td>
<td>9,114</td>
<td>409.3</td>
</tr>
<tr>
<td>Nevada</td>
<td>429,362</td>
<td>134,377</td>
<td>31.3</td>
<td>30,425</td>
<td>341.7</td>
</tr>
<tr>
<td>Arkansas</td>
<td>479,016</td>
<td>26,003</td>
<td>5.4</td>
<td>6,717</td>
<td>287.1</td>
</tr>
<tr>
<td>North Carolina</td>
<td>1,458,035</td>
<td>106,180</td>
<td>7.3</td>
<td>28,709</td>
<td>269.8</td>
</tr>
<tr>
<td>Virginia</td>
<td>1,230,857</td>
<td>89,968</td>
<td>7.3</td>
<td>24,876</td>
<td>261.7</td>
</tr>
<tr>
<td>Delaware</td>
<td>122,574</td>
<td>6,831</td>
<td>5.6</td>
<td>1,957</td>
<td>249.1</td>
</tr>
<tr>
<td>Georgia</td>
<td>1,649,589</td>
<td>72,613</td>
<td>4.4</td>
<td>20,944</td>
<td>246.7</td>
</tr>
<tr>
<td>Alabama</td>
<td>744,516</td>
<td>19,508</td>
<td>2.6</td>
<td>5,751</td>
<td>239.2</td>
</tr>
<tr>
<td>Kentucky</td>
<td>666,225</td>
<td>12,919</td>
<td>1.9</td>
<td>3,878</td>
<td>233.1</td>
</tr>
<tr>
<td>Tennessee</td>
<td>964,259</td>
<td>25,449</td>
<td>2.6</td>
<td>8,465</td>
<td>200.6</td>
</tr>
<tr>
<td>Ohio</td>
<td>1,827,184</td>
<td>38,026</td>
<td>2.1</td>
<td>13,867</td>
<td>174.2</td>
</tr>
</tbody>
</table>

LEP students live in every state and are enrolled in schools of every size and description—public, private, and charter. A substantial number attend schools in sovereign Indian Nations or schools operated by the Federal government through the Bureau of Indian Affairs.

The LEP student population is linguistically diverse, speaking virtually every world language and many that are indigenous to this country. Approximately four out of five LEP students speak Spanish, the dominant language of the American Southwest prior to acquisition from Mexico and the language of roughly half of the people in the Western Hemisphere. Contrary to popular opinion, most LEP students, including native
Spanish speakers, were born in the United States, and Native Alaskan, Native American, and Native Hawaiian languages are the dominant languages of LEP students in Alaska, Hawaii, Montana, North Dakota, and South Dakota.

Most LEP students are members of racial and ethnic minority groups. They are disproportionately poor and frequently attend schools which are segregated and under-funded. Many of their parents have limited educational attainment, often as a result of limited schooling in their native countries if they are immigrants, or as a result of having been denied an equal education opportunity in American schools if they are native-born U.S. citizens. Finally, LEP students represent the most educationally needy group of students in America. In addition to learning the academic content taught in our schools, they must also master English, a new language.

**Academic Performance of LEP Students**

LEP students comprise the lowest-scoring group of students as measured by state and local academic achievement tests and the federally-mandated standardized test required under NCLB. While the NCLB-mandated state tests vary significantly in their levels of performance standards, the National Assessment of Educational Progress (NAEP) provides a uniform instrument for measuring and comparing the achievement of non-LEP and LEP students nationally. The most recent NAEP shows the magnitude of the achievement gap separating LEP and non-LEP students in reading and mathematics.

### 2009 NAEP Reading Scores

<table>
<thead>
<tr>
<th>LEP 4th Graders</th>
<th>Non-LEP 4th Graders</th>
</tr>
</thead>
<tbody>
<tr>
<td>71% below Basic</td>
<td>31% below Basic</td>
</tr>
<tr>
<td>29% at or above Basic</td>
<td>69% at or above Basic</td>
</tr>
<tr>
<td>6% at or above Proficient</td>
<td>34% at or above Proficient</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LEP 8th Graders</th>
<th>Non-LEP 8th Graders</th>
</tr>
</thead>
<tbody>
<tr>
<td>75% below Basic</td>
<td>24% below Basic</td>
</tr>
<tr>
<td>25% at or above Basic</td>
<td>76% at or above Basic</td>
</tr>
<tr>
<td>3% at or above Proficient</td>
<td>32% at or above Proficient</td>
</tr>
</tbody>
</table>

### 2009 NAEP Mathematics Scores

<table>
<thead>
<tr>
<th>LEP 4th Graders</th>
<th>Non-LEP 4th Graders</th>
</tr>
</thead>
<tbody>
<tr>
<td>43% below Basic</td>
<td>16% below Basic</td>
</tr>
<tr>
<td>57% at or above Basic</td>
<td>84% at or above Basic</td>
</tr>
<tr>
<td>12% at or above Proficient</td>
<td>41% at or above Proficient</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LEP 8th Graders</th>
<th>Non-LEP 8th Graders</th>
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<tbody>
<tr>
<td>72% below Basic</td>
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<td>28% at or above Basic</td>
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</tr>
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<td>5% at or above Proficient</td>
<td>34% at or above Proficient</td>
</tr>
</tbody>
</table>

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8. Spanish speakers, were born in the United States, and Native Alaskan, Native American, and Native Hawaiian languages are the dominant languages of LEP students in Alaska, Hawaii, Montana, North Dakota, and South Dakota.9

9. Most LEP students are members of racial and ethnic minority groups. They are disproportionately poor and frequently attend schools which are segregated and under-funded. Many of their parents have limited educational attainment, often as a result of limited schooling in their native countries if they are immigrants, or as a result of having been denied an equal education opportunity in American schools if they are native-born U.S. citizens. Finally, LEP students represent the most educationally needy group of students in America. In addition to learning the academic content taught in our schools, they must also master English, a new language.
It should be noted that the achievement gap separating LEP and non-LEP students increases at higher grades. While a small portion of this gap increase is attributable to the new enrollment of immigrant LEP students at higher grade levels in U.S. schools, a greater portion of the gap increase reflects the failure of schools to provide LEP students at lower grade levels with the academic English required for success at higher grade levels. Far too many schools confuse conversational language skills with academic language skills which are far more advanced, complex, and robust; they consequently cut short the language assistance and development which are needed for academic success at higher grade levels.

The educational achievement gap separating LEP and non-LEP students documented in NAEP carries over into an educational attainment gap. Both the achievement and attainment gaps reflect harsh realities LEP students encounter in public schools. These harsh realities include the fact that LEP students:

- are disproportionately enrolled in special education programs having been misdiagnosed as “learning disabled” or “speech impaired” because of confusion within the education profession about the complex relationship between language, learning, and cognitive ability;
- are more often forced to repeat grades than their non-LEP counterparts; and
- have the highest school dropout rate and the lowest rate of college attendance of all demographic student subgroups.

**How Most Schools Fail SOL-LEP Students**

A typical five-year-old child knows approximately 2,000 words before he or she starts kindergarten and has developed the ability to use those words to construct meaningful sentences.\(^{11}\) A primary function of formal education is to develop literacy, the ability to read and write, by building upon a child’s aural and oral language skills which have been developed through thousands of hours of parent-child communication in the home. For native-English-speaking children, this transition from oral fluency to literacy is continuous, relatively smooth, and uncomplicated.

The path to literacy for most SOL-LEP students is tortuous. Because most American teachers are monolingual English speakers, they are not able to understand and utilize the native language skills SOL students possess. Most SOL-LEP students are forced to abandon their native language vocabulary and oral language skills and start all over developing a new vocabulary in English before they are taught to read and write. This discontinuity in the natural development of literacy disrupts cognitive development, delays learning, and negatively affects a child’s self-confidence and sense of efficacy. At the same time, the disjuncture between home and school language presents a formidable obstacle to parents who want to participate in their children’s education.

The problems SOL-LEP students experience in our schools stem not only from the monolingualism of their teachers but also from the widespread lack of knowledge in the education community about second language development and its relationship to academic learning. While a LEP student can reach an acceptable level of conversational English in a few years, the development of literacy skills required for grade-level content learning takes substantially longer. Indeed, there is near unanimity within the professional educational research and language development communities that it takes between five and eight years for a LEP student to achieve academic language parity with native-English-speaking student peers.

The provision of English language development programs and instructional services to LEP students are frequently terminated on the basis of a student’s mastery of oral English proficiency and rudimentary literacy skills. Students served in this fashion experience academic difficulties in content learning,
difficulties which increase as the level of academic language proficiency needed for successful content learning increases with each grade level. And so, countless LEP students fall behind in their studies of math, science, history, and civics because they lack the academic language skills required for success.

Subject matter content can, of course, be taught in any language, including the home languages of SOL students. Substantive knowledge learned in a non-English language is naturally transferred into English as a LEP student’s English language skills develop. Thus, academic content learning need not be put “on hold” until a child develops the academic English skills appropriate to his or her grade if instruction is provided by a bilingual teacher proficient in the student’s home language. And when bilingual teachers use the home language of their pupils for content instruction, parents whose knowledge of English is limited can become active partners in their children’s education and can share their knowledge with them.

The linguistic disconnect between English-only schools and non-English-background families can also negatively affect a child’s emotional development and well-being. This is especially true for an immigrant child who may be struggling to adapt to life in an unfamiliar culture and who may be experiencing a sense of social isolation and even alienation.

As linguist Lily Wong Fillmore wrote:

> When parents are unable to talk to their children, they cannot easily convey to them their values, beliefs, understandings, or wisdom about how to cope with their experiences. They cannot teach them about the meaning of work, or about personal responsibility, or what it means to be a moral or ethical person in a world with too many choices and too few guideposts to follow. What is lost are the bits of advice, the *consejos* parents should be able to offer children in their everyday interactions with them. Talk is a crucial link between parents and children: It is how parents impart their cultures to their children and enable them to become the kind of men and women they want them to be. When parents lose the means for socializing and influencing their children, rifts develop and families lose the intimacy that comes from shared beliefs and understandings.12

As Dr. Fillmore documented in her research, the disruption to normal family communication that occurs when families and schools speak different languages has profound academic and social impacts on LEP students including increased likelihood of dropping out of school, becoming a gang member, or engaging in self-destructive and/or anti-social behavior.

**Federal Civil Rights Laws & LEP Students**

Title VI of the Civil Rights Act of 1964 bans discrimination on the basis of race, color, or national origin in any program receiving federal financial assistance. Because state and local education agencies receive federal aid, public school students are protected against the forms of discrimination banned by this civil rights law.

On May 25, 1970, the Office for Civil Rights of the Department of Health, Education, and Welfare issued a memorandum to all “School Districts With More Than Five Percent National Origin Minority Students.” The document was prepared after compliance reviews conducted by the Department’s Office for Civil Right revealed “a number of common practices which have the effect of denying equality of educational opportunity to national origin minority students who were deficient in English language skills.” The memorandum stated:
Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

The memorandum further provided that:

- School districts must not assign national origin minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills;

- Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track; and

- School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.

The validity of the May 25, 1970 memorandum was upheld by the Supreme Court of the United States in the 1974 decision of *Lau v. Nichols*. The *Lau* case was a class-action suit by the parents of nearly 3000 Chinese pupils with limited English ability in the 16,500 student San Francisco public school system. Approximately one-third of the Chinese students received supplemental instruction in the English language; the remainder received no special instruction. The plaintiffs alleged that the school district’s conduct violated both the Fourteenth Amendment to the Constitution and Title VI of the Civil Rights Act of 1964.

Because the Court unanimously found the San Francisco system in violation of Title VI, it declined to rule on the plaintiffs’ constitutional claims. The logic of the Court’s decision, authored by Justice William Douglas, was straightforward. Justice Douglas reviewed the provisions of the California Education Code pertaining to English-language and bilingual instruction in the state to English-proficiency requirements for high school graduation and to the compulsory full-time education of children between the ages of 6 and 16 years.

Under these state-imposed standards there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.

Basic English skills are the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experience wholly incomprehensible and in no way meaningful.
Shortly after the Court’s decision in *Lau*, Congress passed and President Nixon signed the Equal Educational Opportunities Act of 1974 (EEOA), which *inter alia*, codified the rights of LEP students enunciated in *Lau*. Section 1703 of the EEOA simply states:

> No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by—
>
> (f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

In 1981 the Fifth Circuit Court of Appeals enunciated a flexible and practical definition of what constitutes “appropriate action to overcome language barriers” in its decision in *Castaneda v. Pickard*. The *Castaneda* definition has been employed in numerous subsequent court decisions on the application of the EEOA to LEP students, and is central to the Education Department’s Office for Civil Rights regulations respecting LEP students. The *Castaneda* definition of “appropriate action” has three parts.

First, a school system must be “pursuing a program informed by an educational theory recognized as sound by some experts in the field or, at least, deemed a legitimate experimental strategy.” Second, “the programs and practices actually used by a school system [must be] reasonably calculated to implement effectively the educational theory adopted by the school.” The court explained that “We do not believe that it may fairly be said that a school system is taking appropriate action to remedy language barriers if, despite the adoption of a promising theory, the system fails to follow through with practices, resources and personnel necessary to transform the theory into reality.” The third and final test is the results of the program.

Finally, a determination that a school system has adopted a sound program for alleviating the language barriers impeding the educational progress of some of its students and made bona fide efforts to make the program work does not necessarily end the court’s inquiry into the appropriateness of the system’s actions. If a school’s program, although premised on a legitimate educational theory and implemented through the use of adequate techniques, fails, after being employed for a period of time sufficient to give the plan a legitimate trial, to produce results indicating that the language barriers confronting students are actually being overcome, that program may, at that point, no longer constitute appropriate action as far as that school is concerned.

In 2009, the state of Arizona challenged the EEOA’s protections for LEP students in the U.S. Supreme Court case of *Horne v. Flores*. The state argued that the accountability provisions of the No Child Left Behind Act superseded and rendered moot the provisions of the EEOA protecting LEP students. The Supreme Court rejected the state’s contention and ruled that Arizona schools were obligated to take appropriate action to overcome the language barriers which impede the equal participation of LEP students.

**Fundamental Research Findings Regarding the Effective Instruction of LEP Students**

Last year, the American Institutes for Research (AIR) published a brief reference guide entitled *Common Assumptions vs. the Evidence: English Language Learners in the United States*. The guide notes that education policy and practice respecting LEP students has for too long been dictated by common assumptions rather than sound research. The policy result is controversy and confusion about how to best instruct LEP students; the practical result is conflicting and inconsistent and ineffective educational programs which produce academic failure.
One of the most common assumptions is that native language learning impedes English learning and academic progress. This assumption according to AIR is contrary to the weight of research evidence.

Findings from multiple research studies have established that rapid, unsupported English language acquisition is not a realistic goal for ELL instruction. Rather, students who have received little to no academic or cognitive development in their first language tend to do increasingly poorly as academic and cognitive demands increase after fourth grade and into the upper grades. Oral proficiency can take 3 to 5 years to develop, and academic English proficiency may take 4 to 7 years. Consequently, a curriculum that supports ELL students’ academic and linguistic needs in both languages over a sustained period of time represents a more reasonable approach to closing the achievement gap between ELL students and native English speakers.

The AIR reference guide cautions against confusing a student’s oral language skills with their academic language proficiency, noting that the withdrawal of language support services before the complete development of academic language proficiency frequently hinders further academic progress.

The AIR reference guide also refers to the cognitive benefits associated with dual or multiple language development. Indeed, physicians and neuroscientists are now confirming what linguists and psychologists have been saying for years — that the biggest benefit from multilingualism may be increased cognitive ability. Research has found that the brains of multilingual people have more gray matter than the brains of monolinguals and exhibit increased and less centralized brain activity when solving problems.

Last year, a research team appointed by the European Commission issued a report on the effects of multilingualism on the brain and cognition. They found six main areas where multilingualism seems to give people an advantage: learning in general, complex thinking and creativity, mental flexibility, interpersonal and communication skills, and even a possible delay in the onset of age-related mental diminishment later in life.

These findings accord with established evidence that students scores on academic tests of mathematics and science achievement increase with the development of bilingualism and multilingualism. Indeed, expressions of disappointment over U.S. student test scores in relation to the scores of students in other countries frequently ignore what maybe the single greatest failing of our public schools – the failure to teach all students at least two languages.

The Impact of NCLB on LEP Students

The only significant benefit LEP students have derived from the 2002 No Child Left Behind Act is increased public recognition that U.S. schools are failing to educate them effectively and that change is required. This benefit is a result of the “subgroup” reporting requirements for student assessments and the accountability sanctions of the law. But identifying a problem and solving it are two different things; and in numerous ways, NCLB moved LEP students backward rather than forward on the path towards educational equity and excellence.

NCLB repealed the Bilingual Education Act (BEA), Title VII of the Elementary and Secondary Education Act. Enacted in 1968, the BEA reflected the federal government’s special obligation to language-minority students and their families. Indeed, the presence of virtually all language-minority Americans in schools is directly attributable to actions of the federal government respecting territorial annexation, immigration and refugee policies, or the conduct of war. The BEA also represented an effort to ameliorate the horrific educational consequences of past policies of language repression like the federally-created Indian Boarding Schools.
Repeal of the BEA also signaled the end of the federal government’s commitment to building the capacity of state and local education agencies to provide equal and effective educational programs to language-minority Americans. NCLB formula grants to school districts enrolling LEP students (averaging less than $100 per student) are neither designed for nor tied to the development of institutional capacity. Title VII competitive grants provided under the BEA focused on the development and implementation of programs specially designed for LEP students. The grants included support for the training and hiring of teachers, administrators, instructional assistants and education specialists; the acquisition and development of instructional and assessment materials; and the design and implementation of programs to educate and engage parents. The grants were to develop institutional capacity so that programs could continue in the absence of further federal aid. And because the BEA grants were competitive, money supported the highest quality local programs tailored to the diverse needs of local communities and the widely varying populations they serve. Funded programs included specially designed English-only programs, programs which made use of students’ native languages for transitional support, and programs designed to develop full bilingualism and biliteracy of both LEP and native-English-speaking students.

The NCLB totally ignores the development of bilingualism even though America’s national security, economic competitiveness, and global leadership require more than ever before an understanding of world languages and cultures. Thus instead of preparing students for the challenges of the 21st Century, the NCLB focuses exclusively on English language acquisition—a focus that even 19th Century American educators and policy-makers rejected as too limited and narrow.

The repeal of the BEA also eliminated the program of graduate fellowships (Masters degrees and Ph. D.s) in bilingual and ESL education. The Title VII program of graduate fellowships produced a generation of scholars in colleges and universities who conducted research on the education of LEP students and taught aspiring teachers about the principles and processes of second language development and how best to instruct these students. Many of the Title VII graduate fellows are approaching retirement age and the NCLB has not produced a single replacement.

Most U.S. teachers report that they are unprepared to instruct LEP students effectively. In a 2001 National Center for Education Statistics survey, only 27% of teachers felt that they were “very well prepared” to meet the needs of LEP students while 12% reported that they were “not at all prepared.”

Despite the on-going growth of the LEP population, and despite a nationwide shortage of teachers trained in bilingual or ESL education, most college-and university-based teacher training programs give little attention to preparing teachers for the linguistic diversity of U.S. classrooms.

A 2009 study by the Government Accountability Office (GAO) found that basic teacher preparation programs in the U.S. were far more likely to provide some training related to special education than to the instruction of LEP students even though the proportion of students who are LEP is substantially higher than the proportion of students with disabilities. The GAO found that a majority of traditional teacher-prep programs have at least one course that focuses solely on how to educate students with disabilities while no more than 20% of teacher-prep programs require at least one course that focuses entirely on how to teach LEP students. LEP students are more often “a partial focus of required courses” than are students with disabilities, the study says. In addition, a larger proportion of teacher-preparation programs require field experiences for prospective teachers with students with disabilities than with LEPs. Administrators of teacher-prep programs told the GAO that one of the main reasons they don’t have stiffer requirements for teachers to be trained to work with LEPs is that their state standards don’t require it of them.
Even in a state with relatively high teacher certification standards such as California, where since 1999 new
teachers have been required to receive special training for the instruction of dual language learners, only
half of new teachers have done so.\textsuperscript{26} And according to a 2005 study of California classroom teachers, 43% of
teachers whose classes consist of a majority of LEP students received no more than one in-service training
session in the past five years on how to instruct these students.\textsuperscript{27}

The lack of preparedness to serve LEP children extends downward from K-12 public schools to Head Start
and other governmentally sponsored preschool programs. A 2010 report found that Latino 3-5 year old
children in Chicago were half as likely to be enrolled in a Head Start or other formal preschool program
as White or Black youngsters.\textsuperscript{28} The lack of Spanish-speaking staff in many of the city’s early childhood
education programs was one of the reasons for the under enrollment of Latino youngsters. Chicago’s
situation is not believed to be different from that of other major cities, but when it comes to serving non-
English-language-background children, the Illinois Department of Education’s recent requirement that
preschool staff develop competency in the home language of the children they instruct sets Illinois apart and
ahead of other states.

While the subgroup assessment requirements of NCLB helped to expose public education’s failure to serve
LEP students effectively, the accountability provisions have not rectified these problems. Large numbers of
LEP students, especially in major cities, have had their “failing” schools closed. The public schools to
which many were transferred are, in most cases, no better able to provide quality instruction. And many of
the charter schools promoted as an alternative to failing public schools are for LEP students not an
alternative at all because most charter schools do not offer programs designed to meet the educational needs
of LEP students.

\textbf{The Proper Role of Language & Culture Education in a New ESEA:
Preparation for the Future, Respect for the Past}

During a town hall meeting on education in Thornton, Colorado during the 2008 presidential campaign,
Senator Barack Obama stated:

\begin{quote}
Understand that my starting principle is everybody should be bilingual or everybody should be
trilingual. ”...We as a society do a really bad job teaching foreign languages, and it is costing us
when it comes to being competitive in a global marketplace.\textsuperscript{29}
\end{quote}

Candidate Obama’s criticism of foreign language teaching in this country was understated. The United
States is the only industrialized nation in the world that has not advanced beyond the goal of single-language
literacy in its education policy. Multilingual education is the norm in many Asian and African countries and
throughout the Middle East. All European Union countries, including the national birthplace of English, the
United Kingdom, provide instruction in at least two languages to their public school students, and many
countries provide students with education in three or even more languages. As Rep. Judy Chu recently noted,
“Twenty out of the 25 leading industrialized countries start teaching second languages from K to 5th grade
and 21 of the 31 countries in the European Union require nine years of second language learning.”\textsuperscript{30}

Demographic trends together with the spread of inexpensive technology are diminishing, not expanding, the
role of English in the world. At the same time, the importance of “local” non-English languages is increasing.
While roughly 9% of the planet’s population grew up speaking English as their first language just a few
years ago, experts predict that this number will shrink to about 5% over the next 40 years.\textsuperscript{31}
An American student who achieves proficiency in English and a second world language will enjoy professional opportunities beyond those available to English-language monolinguals. As information competes with (and sometimes eclipses) material goods in the world economy, the value of multilingualism increases.

For proof of this economic reality, one need look no farther than the Google Corporation founded in 1998 with the audacious mission “to organize the world’s information and make it universally accessible and useful.” Technology was essential to accomplishment of Google’s mission – super high speed software to sift through the massive collections of data on the internet. But profound knowledge of languages and the cultures associated with them were equally necessary. Google hired not only the best IT engineers to develop their software but also the best SEOs, or search engine optimizers, who had phenomenal knowledge of language and its cultural connotations and how it is used by people when they search for information. And so, in May 2007, Google launched its “40 Language Initiative” with the aim of getting Google products into 40 languages, mapping to roughly 70 countries and enabling 99.3% of the internet population to use Google products. Google’s 40 Language Initiative succeeded, the corporation met its goal, and today Google has a market value of almost $200 billion!

Just as multilingualism is essential for American economic competitiveness so is it also vital to the nation’s security. In 2009, CIA Director Leon Panetta launched a five-year initiative to double the number of analysts and intelligence collectors with foreign language proficiency and to transform the Agency’s language training. Last year, he made foreign language aptitude a stricter requirement for promotion to the Senior Intelligence Service. And in a national summit in December, Director Panetta brought together policymakers, members of Congress, Intelligence Community officials, and leading language educators from across the country to focus on the development of multilingualism. “Strengthening the CIA’s language capability has been a top priority for me since I became Director,” said Mr. Panetta. “It’s crucial to our mission and to meeting the expectations of those we serve.”

Multilingualism and cross-cultural understanding are not only important for national security but also for international cooperation to solve complex problems like global warming. Whether our children learn world languages and cultures will determine the extent to which the United States is respected as a world leader.

Finally, multilingual education is essential if succeeding American generations are to appreciate and understand their national heritage. For most of our history, U.S. language education policy has been warped by linguistic chauvinism, xenophobia, and racism. The English-only policies of public schools have functioned as an instrument of national self-denial, robbing students of the rich cultural and linguistic heritage that is America. Indian languages, native Alaskan languages and native Hawaiian languages were stilled in our schools; native cultures were forsaken and forgotten. By ignoring native languages and cultures we disregarded the collective knowledge of prior generations including an understanding of how to live in harmony with our natural environment. To be sure, there have been occasional episodes of recognition – like the service of military Code Talkers during the First and Second World Wars – when the value of American heritage languages drew public praise. But praise for the indigenous languages which made the U.S. victorious in war died out quickly once peace was won, and the languages were left to die.
Recommendations for ESEA Reauthorization Legislation

The legislative recommendations for a new ESEA presented in this policy brief focus on the development of the nation’s capacity to provide an equal educational opportunity to LEP students. Their adoption by Congress and the Obama Administration would substantially advance the larger and more general goal of providing all students with an excellent education which enables them to meet future challenges.

Recommendation #1: Title II of the ESEA should be amended to provide competitive grants to establish and expand pre-service teacher training programs focused on the effective instruction of LEP students.

The scope and size of this program must be sufficient to overcome the current shortage of qualified teachers of LEP students and to produce sufficient teachers to accommodate the projected growth in LEP student enrollments. To promote quality training, the program should be structured as competitive grants to institutions of higher education working in collaboration with state, local and tribal education agencies. The pre-service training supported by the grants should provide general classroom teachers with the knowledge, skills, and abilities required for the successful instruction of LEP students. The program should also support the pre-service training of specialized teachers in content areas such as STEM and discrete student populations including students identified for special education and gifted and talented. The pre-service programs should provide tuition scholarships and loans to enrolled students with a requirement of teaching service for the forgiveness of loans and scholarship aid. Preference should be given to grant applications which include “grow your own” teacher recruitment programs focused on bilingual secondary students and career-ladder teacher training programs for bilingual teacher aides and paraprofessionals. Preference should also be given to teacher residency and mentor teaching programs which offer teacher degree candidates with real-life classroom learning and support.

Recommendation #2: The ESEA should be amended to provide for a national staff development program for teachers and administrators who serve LEP students.

A large-scale competitive grant program should be established for local and tribal education agencies working with institutions of higher education and non-profit education organizations to equip current classroom practitioners and school administrators with the pedagogical, linguistic, and cultural competencies needed to serve LEP students effectively. The grants for staff development should give preference to applications which contain the elements of effective staff development including sustained and collaborative instruction focused on team-building.

Recommendation #3: Title III of the ESEA should provide grants and loans for Masters and Doctorate degree students in bilingual and ESL education.

Increasing the capacity of institutions of higher education to conduct research on the wide array of complex issues associated with LEP education and to prepare the next generation of teacher trainers is essential to sustain the nation’s commitment to LEP students. Forgiveness of student grants-in-aid and loans should be provided for with the requirement of future service.
Recommendation #4: The requirement for “Highly Qualified Teachers” contained in the NCLB should be modified for teachers assigned to classes with a significant number of LEP students to include certification in bilingual and/or ESL education.

A teacher of LEP students who lacks training in bilingual and/or ESL education should not be considered “highly qualified” as is the case under current law. Indeed, the definition should also be designed to encourage teachers to develop second language competencies so that they can communicate effectively with LEP students and their parents.

Recommendation #5: ESEA should be amended to reserve 20% of all Title III appropriations for a new Title III program of competitive grants to state, local, and tribal education agencies to develop and implement or expand instructional programs for LEP students which enable them to master both English and a second language while meeting challenging academic content standards.

The supported programs would advance the nation’s progress in providing “world-class” education that meets the 21st Century challenges of global competition and collaboration. To the extent practicable, these programs should be two-way, enrolling both LEP and English-language-background students. Two-way dual language programs are extremely successful because they enable one group of students who are proficient in English and another group of students who are proficient in the second language taught in the programs to learn from each other. Children often learn more of a new language from each other than they do from their teachers because this form of language learning is authentic, natural and fun.

Recommendation #6: The new ESEA must continue to provide for reporting on the academic progress of racial, ethnic, and other student subgroups including LEP students and students in special education. The current requirements pertaining to LEP students should be reformulated to include on-going separate academic reporting on students who are reclassified as English proficient (EP).

NCLB’s subgroup reporting requirements, as noted earlier in this brief, have been the principal and maybe the exclusive benefit of the law to ELL students. The failure of public schools to educate effectively the fastest growing and most educationally needy segment of our student population cannot be ignored! Subgroup reporting under a new ESEA must be required.

The reporting requirements for LEP students should be reformulated to provide for on-going separate reporting on former LEP students who are designated as English proficient (EP). This continued reporting is important for two reasons. First, by requiring schools to report the progress of students who are reclassified as English proficient, the law would help schools identify instances where they are prematurely terminating needed instructional services to students who lack the academic English skills required for success. Second, requiring the tracking and reporting of the academic progress of LEP students who are reclassified as EP provides schools and the communities they serve with real-life, long-term evidence to compare the relative value of different instructional approaches and programs for LEP students.
Recommendation #7: All student academic assessments included in a new ESEA must be linguistically and culturally valid and reliable for non-English-language-background children. Moreover, assessments of LEP student progress in English language arts must reflect an understanding of the time-framed stages of second language development.

LEP students have suffered because schools frequently use assessments which are neither valid nor reliable for second language learners. The common misidentification of LEP students as “learning disabled” or “speech impaired” is the one of the more flagrant results of invalid assessment practices. A new ESEA must provide safeguards against the misclassification of LEP students and provide for the utilization of academic assessments which appropriately take into account not only the language and cultural background of students but also the knowledge of how LEP students learn and can be expected to progress. This knowledge of the time-framed stages of second language development and academic progress must be reflected in an assessment model based on student academic growth.

Recommendation #8: Accountability provisions of a new ESEA must ensure that actions taken to assist students attending “underperforming” schools or to transform “failing” schools are likely to be beneficial to the LEP students they enroll.

NCLB requires schools which are not making adequate yearly progress to offer students supplemental educational services (SES), often provided by non-profit or profit-making companies. Many, possibly most, of the SES providers lack the ability and have no track record in serving LEP students. In the case of schools which have been designated as “failing,” transferring students to different public school that also fails to provide the appropriate and necessary language assistance and support does nothing to improve the learning opportunities for LEP students. And while charter schools have been touted as an answer to failing traditional public schools, their overall record for LEP students is no better. Most charter schools neither recruit, attract, nor serve LEP students as well as other student populations. The new ESEA must include provisions to ensure that the actions and programs undertaken to remedy school failure are designed for and likely to be beneficial to the LEP students attending those schools.

Recommendation #9: A new ESEA must include in both Title I and Title III parental engagement requirements and support programs for parent education and training.

The parents of LEP students, like all parents, want the best for their children. Effective instructional programs involve parents and assist them in developing their ability to better support their children academically. Parent engagement and education programs are particularly needed in the case of LEP parents quite often lack a complete formal education either because of immigration or because of ineffective and unequal schooling in this country.
Recommendation #10: A new ESEA must not subordinate content learning to English language development nor delay the teaching of academic content until a student has mastered English as a second language.

An unintended consequence of the NCLB has been to elevate the importance of English language development above that accorded to other academic learning. The imbalance is fostered by the annual measurement of English skills in the context of negative accountability sanctions. Even the term “English Language Learner,” which NCLB codified wrongly narrows the educational objectives for these students or conveys that false notion that English language development has a priority to other academic objectives for them. This result is contrary to what we know about the need for all students to receive instruction that is balanced, comprehensive, and developmentally appropriate.

Recommendation #11: A new ESEA must contain provisions in Title I to require that low-income LEP students receive services which are instructionally appropriate and effective for them.

The fact that most LEP students are poor means that the schools they attend usually receive Title I federal aid. Federally supported services designed for English-language-background students do not necessarily benefit LEP students, and in some cases, may actually disadvantage these students further. Title I funds received by a school because of the enrollment of income-eligible LEP students must be spent on programs and services specifically designed for LEP students.

This coalition is committed to collaborating with individuals and organizations nationwide to influence Congress and the President regarding the need for changes in ESEA policy and programs. For information on how you can support this effort, please visit our endorsement site at:  

Footnotes

Source of Cover Photos: Education Week


2 Various labels have been used to describe these children including PHLOTE (Primary Home Language Other Than English), NELB (Non-English-Language-Background), LM (Language Minority), and Speakers of Other Languages, the term adopted in this paper.

3 The current version of the Elementary and Secondary Education Act uses the terms limited-English-proficient (LEP) and English Language Learners (ELL) synonymously. This paper uses the term limited-English-proficient as it is the term employed in civil rights and education laws respecting the needs and rights of these students.

4 http://www2.ed.gov/about/offices/list/oela/title3biennial0406.pdf
Figure source: Migration Policy Institute, ELL Information Center Fact Sheet Series, No. 1 (2010). Number and Growth of Students in US Schools in Need of English Instruction. Washington, D.C. http://www.migrationinformation.org/ellinfo/FactSheet_ELL1.pdf


7 Tables Source: Migration Policy Institute, op cit. http://www.migrationinformation.org/integration/ellcenter.cfm


9 Ibid.


13 94 S. Ct. 786.

14 Ibid., p. 789.


17 Ibid. at 1009.

18 Ibid. at 1010.

19 Ibid.


27 Ibid., p. 17.


James J. Lyons is a Washington, D.C. civil rights attorney and policy expert who has focused his 40+ year career on securing educational equity and excellence for racial, ethnic, and linguistic minority students and their families. A native of Omaha, Nebraska, Mr. Lyons attended The George Washington University in Washington, D.C. where he received his B.A. in American Thought and Civilization, worked on a Ph.D., and later received his J.D. degree.

Jim began his career as a research assistant to social psychologist and civil rights legend the late Dr. Kenneth B. Clark who, with his late wife Dr. Mamie Phipps Clark, authored a study of the impact of racial segregation on young children which the U.S. Supreme Court relied upon in its landmark decision in *Brown v. Board of Education*. Mr. Lyons subsequently worked at the U.S. Commission on Civil Rights authoring school desegregation studies and later serving as the Commission’s Director of Congressional Liaison.

Mr. Lyons was recruited by the Administration of President Jimmy Carter to help secure passage of the legislation establishing the U.S. Department of Education, and once the legislation was enacted, he was appointed by President Carter as Special Assistant for Equal Opportunity Policies and Programs to the Assistant Secretary for Legislation. Following the election of President Ronald Reagan, Jim worked in the Education Department’s Office for Civil Rights developing a Title VI civil rights enforcement policy to effectuate the guarantee enunciated by the Supreme Court in *Lau v. Nichols*.

Jim left federal employment in 1982 and opened a solo legal practice specializing in legislation to expand the educational opportunities of language-minority students. He authored the Bilingual Education Act of 1984, and in 1990, was named Executive Director of the National Association for Bilingual Education (NABE). He retired from NABE in 1998 and moved to Delaware when his late wife was diagnosed with terminal cancer.

In 2008, Jim returned to the Washington, D.C. area to resume his work championing the rights of non-English-language background students and their families.