



BUENO NATIONAL POLICY CENTER FOR BILINGUAL & MULTICULTURAL EDUCATION

Opportunity Lost

The Promise of Equal and Effective Education for Emerging Bilingual Students in the Obama Administration

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An examination of the record of the U.S. Department of Education as it relates to Emerging Bilingual Students under the leadership of Secretary of Education Arne Duncan.

FINAL REPORT

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INTRODUCTION

The purpose of this policy review is to examine the record of the United States Department of Education under the leadership of Secretary of Education Arne Duncan, who was sworn in on the same day as President Barack Obama was sworn in for his first term, as it relates to the educational needs of Emerging Bilingual students.¹

The reasons for undertaking this review include the following:

- While public discourse about the education policies of the Administration is voluminous, scant attention has been paid to their impact on Emerging Bilingual students. Neither declared objectives nor “unintended” consequences of the Administration’s education policy decisions and initiatives on these students have been systematically identified and examined.
- Emerging Bilingual students constitute the fastest growing segment of public school enrollment in the United States. This dynamic growth will continue in the future. The United States Department of Education projects that by 2025, they will constitute one-quarter of the nation’s kindergarten through twelfth grade school enrollment.
- Emerging Bilingual students have instructional needs that are distinctive and different from those of English-only speaking students. Policies and programs designed to improve the academic achievement and educational outcomes of English-only students are often ineffectual for Emerging Bilingual Students and sometimes harmful.
- The federal government bears a special obligation to assist state and local education agencies which serve Emerging Bilingual students. Federal civil rights laws and court decisions guarantee Emerging Bilingual students the right to an equal education and require schools take affirmative steps to overcome language barriers that impede academic learning and success.
- Whether measured by local, state or federal measures of academic achievement and educational outcomes, Emerging Bilingual students are among the most poorly-served group of students in the United States.

All of these matters will be discussed in greater detail in this report.

This policy review has been written for the general public. Every effort has been made to present data and describe programs and policies in a straight-forward understandable manner consistent with the facts. Educational jargon and acronyms have been avoided to the greatest extent possible. To facilitate readability, explanatory and documentary citations are presented as endnotes following each section of the report.

The first three sections of this report present background information on Emerging Bilingual students, the civil rights protections applicable to them, the federal education programs designed to serve them, and a snapshot of this student population at the time President Obama took the oath of office in 2009. Subsequent chapters focus on major policy themes, actions, and events which, taken together, constitute the Administration’s record in addressing the educational needs of Emerging Bilingual students.

¹ The text of this report uses the term “Emerging Bilingual students” to describe students who have a language other than English as their primary or home language and who have not yet been classified as “fully English proficient”. The alternative terms “English Language Learners” and “Limited-English-Proficient” are retained when used in primary material cited or reproduced herein.

II

The Civil Rights of Emerging Bilingual Students

On June 19, 1963, President John F. Kennedy sent Congress a special message calling for the enactment of a comprehensive Civil Rights Act of 1963. One of the matters President Kennedy wanted to address in the bill was the use of federal funds. He wrote:

*Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination.*¹

Although President Kennedy was assassinated less than six months later, Congress did pass the comprehensive Civil Rights Act of 1964 which President Lyndon B. Johnson signed on July 2, 1964.² Title VI of the Civil Rights Act banned 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.

In 1970, the Administration of Richard M. Nixon acted to protect Emerging Bilingual students. 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.”³ The document was prepared after compliance reviews conducted by the Department’s Office for Civil Rights 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*.⁴

The *Lau* case was a class-action suit by the parents of nearly 3,000 Chinese Emerging Bilingual students in the 16,500 student San Francisco public school system. Approximately one-third of the Emerging Bilingual Chinese students received supplemental instruction in the English language but the remainder received no special instruction.

The attorneys for the Emerging Bilingual students claimed that the school district's conduct violated both the Equal Protection Clause of the Fourteenth Amendment to the Constitution and Title VI of the Civil Rights Act of 1964. The San Francisco school system argued it did not discriminate against the Emerging Bilingual Chinese students because these students had the same textbooks and teachers as English-only speaking students. Both the Federal District Court and the 9th Circuit Court of Appeals ruled in favor of the school district (against the students). Although the Supreme Court declined to rule on the students' constitutional claims, the Court unanimously found that the San Francisco public school system was violating Title VI of the Civil Rights Act of 1964.

Writing for the Supreme Court, Justice William Douglas noted:

*The Court of Appeals reasoned that "[e]very student brings to the starting line of his educational career different advantages and disadvantages caused in part by social, economic and cultural background, created and continued completely apart from any contribution by the school system," 483 F. 2d, at 797. Yet in our view the case may not be so easily decided.*⁵

The Supreme Court's logic was straight-forward. Justice Douglas reviewed the provisions of the California Education Code requiring English proficiency for high school graduation and the state's laws requiring children between the ages of 6 and 16 years to attend school on a full-time basis.

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 is 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.*⁶

An important limitation of the *Lau* decision was stated in the concurring opinion written by Justice Blackman and joined in by Chief Justice Douglas.

*I merely wish to make plain that when, in another case, we are concerned with a very few youngsters, or with just a single child who speaks only German or Polish or Spanish or any language other than English, I would not regard today's decision... as conclusive upon the issue whether the statute and the guidelines require the funded school district to provide special instruction. For me, numbers are at the heart of this case and my concurrence is to be understood accordingly.*⁷

Shortly after the Court's decision in *Lau*, Congress passed, and President Nixon signed, the Equal Educational Opportunities Act of 1974 (EEOA).⁸ One section of the Equal Educational Opportunities Act codified the rights of Emerging Bilingual students enunciated in *Lau*. Section 1703 of the Equal Educational Opportunities Act 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.*⁹

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 *Casteñeda v. Pickard*.¹⁰ The *Casteñeda* definition of "appropriate action" had three parts.

First, a school system must be pursuing an instructional program to overcome language barriers that is "informed by an educational theory recognized as sound by some experts in the field or, at least, deemed a legitimate experimental strategy."¹¹

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."¹²

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 bonafide 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.”¹³

An extremely important finding of the Court of Appeals in *Casteñeda* was that school programs which produce English proficiency but which do not overcome other academic deficits are not in compliance with the Equal Educational Opportunities Act.

*We understand § 1703(f) to impose on educational agencies not only an obligation to overcome the direct obstacle to learning which the language barrier itself poses, but also a duty to provide limited English speaking ability students with assistance in other areas of the curriculum where their equal participation may be impaired because of deficits incurred during participation in an agency's language remediation program. If no remedial action is taken to overcome the academic deficits that limited English speaking students may incur during a period of intensive language training, then the language barrier, although itself remedied, might, nevertheless, pose a lingering and indirect impediment to these students' equal participation in the regular instructional program.*¹⁴

The three-part *Casteñeda* test and the finding set out immediately above have been adopted by both the U.S. Department of Education and the U.S. Justice Department in their complaint investigations and compliance reviews of state and local agencies to determine whether an education agency is meeting their civil rights obligations to Emerging Bilingual students under the Equal Educational Opportunities Act.

¹ John F. Kennedy, Special Message to the Congress on Civil Rights and Job Opportunities (1963) Washington, D.C. accessed at <http://www.presidency.ucsb.edu/ws/?pid=9283>

² Public Law 88-352 (78 Stat. 241) accessed at http://www.ourdocuments.gov/print_friendly.php?page=transcript&doc=97&title=Transcript+of+Civil+Rights+Act+%281964%29

³ J. Stanley Pottinger, “Identification of Discrimination and Denial of Services on the Basis of National Origin” (Memorandum, Department of Health, Education and Welfare, 25 May 1970) accessed at <http://www2.ed.gov/about/offices/list/ocr/docs/lau1970.html>

⁴ 414 U.S. 563 (1974) accessed at http://scholar.google.com/scholar_case?case=5046768322576386473&hl=en&as_sdt=2&as_vis=1&oi=scholar

⁵ *Ibid.*, at 564.

⁶ *Ibid.*, at 566.

⁷ *Ibid.*, at 572.

⁸ Public Law. 113-9, 20 USC § 1701-1705

⁹ *Ibid.*, accessed at <http://www.law.cornell.edu/uscode/text/20/chapter-39/subchapter-I/part-2>

¹⁰ 648 F.2d 989 (1981) accessed at http://scholar.google.com/scholar_case?case=16848723757397550913&hl=en&as_sdt=2&as_vis=1&oi=scholar

¹¹ *Ibid.* at 1009.

¹² *Ibid.* at 1010.

¹³ *Ibid.*

¹⁴ *Ibid.* at 1011.

III

Federal Education Programs for Emerging Bilingual Students

The Elementary & Secondary Education Act

In 1965, Congress passed the Elementary and Secondary Education Act (ESEA) as part of President Lyndon Johnson's "War on Poverty." The Elementary and Secondary Education Act represented the most significant federal elementary and secondary education program enacted up to that time.¹

The Elementary and Secondary Education Act's largest and most significant component – "Title I, Financial Assistance To Local Educational Agencies For The Education Of Children Of Low-Income Families" -- was designed to offset the negative educational consequences associated with poverty and to reduce an academic achievement gap, especially in reading and mathematics, separating poor students from their more economically privileged peers. Title I funding was concentrated on schools, both public and private, where students at or below the federal poverty line constituted 40% or more of their enrollment. The Elementary and Secondary Education Act contained numerous restrictions on the use of Title I monies to ensure that they were directed to economically disadvantaged children and did not supplant state and local resources. The remaining titles in the Elementary and Secondary Education Act – dealing with school library resources, textbooks, and instructional materials; supplementary educational services; educational research and training; and grants to strengthen state departments of education – were subordinate in significance and funding to Title I.

Federal Assistance to Schools for Emerging Bilingual Children

In 1967, two years after the enactment of the Elementary and Secondary Education Act, Congress focused on the distinctive educational needs of children who arrive at school speaking a language other than English. In January of that year, Senator Ralph Yarborough from Texas and six senate co-sponsors introduced S. 428, the American Bilingual Education Act (BEA), a proposed amendment to the Elementary and Secondary Education Act. The legislation was designed to address "the special educational needs of the large numbers of students in the United States whose mother tongue is Spanish and to whom English is a foreign language."²

Senator Yarborough explained the motivation behind the bill:

*The failure of our schools to educate Spanish-speaking students is reflected in comparative dropout rates. In the five Southwestern States..., Anglos 14 years of age and over have completed an average of 12 years of school compared with 8.1 years for Spanish-surnamed students. I regret to say that my own State of Texas ranks at the bottom, with a median of only 4.7 years of school completed by persons of Spanish surname.*³

Full-scale change, according to the senator, would require “money, coordination, and inspiration.” Confident that the “inspiration will come from the many eager teachers, researchers, administrators, parents, and students who are impatient with the failure of the old methods and anxious to work for a better tomorrow,”⁴ S. 428 was meant to supply the money and coordination.

During seven days of hearings on S. 428 by the Special Senate Subcommittee on Bilingual Education, virtually all of the more than 100 witnesses testified in support of the legislation and its underlying objectives. While much of the testimony relied on basic research in education and psychology, some witnesses presented data derived from experimental (at the time) bilingual school programs.

The concept of a federal program to meet the distinctive educational needs of non-English-language-background students proved politically popular, and soon more than three dozen bilingual education bills were introduced in the House of Representatives. The bill that emerged from a House-Senate conference committee and was signed by President Johnson, however, was different in focus and content from that originally proposed by Senator Yarborough.

The Bilingual Education Act, Title VII of the Elementary and Secondary Education Act

The Bilingual Education Act of 1968 became Title VII of the Elementary and Secondary Education Act. It established a competitive grant program to help local education agencies establish “innovative educational programs” for students with “limited English speaking ability.” The shift in focus from the language children spoke (Spanish or any other native language) to their “limited English ability” cast Title VII as a compensatory program that was not meant to develop student bilingualism and biliteracy. This characterization was reinforced by another provision that grantee schools have a high concentration of students from low-income families.

Title VII grants were to be used to plan, develop and implement innovative instructional programs for Emerging Bilingual children, to train teachers and teacher aides, to develop and disseminate instructional materials, and to undertake parent involvement programs. Early Title VII appropriations were extremely limited but the program’s competitive grant structure concentrated available money making it possible for a small number of school districts to develop and implement effective programs for Emerging Bilingual students.

Throughout the 1970s, ‘80s, and ‘90s, Title VII was amended as part of the Elementary and Secondary Education Act reauthorization process. Some of the amendments clarified the definition and goals of Title VII-funded programs. Thus, the 1974 Elementary and Secondary Education Act amendments stated that “instruction given in, and study of, English, and, to the extent necessary to allow a child to progress effectively through the educational system, the native language” must be provided in Title VII grant-funded programs. The 1974 legislation also eliminated the requirement of poverty for receiving a grant and specifically included Native American students as an eligible population.

Successive Title VII amendments were designed to expand the nation’s capacity to meet the needs of Emerging Bilingual students outside of the limited grants to local school districts. Additional competitive grants were authorized to train teachers and teacher aides in effective instructional approaches and techniques for Emerging Bilingual students; to underwrite graduate fellowship programs for study in the field of bilingual and English as a second language teacher training; for centers to provide technical assistance on the development and implementation of bilingual education programs; to develop and disseminate culturally and linguistically appropriate instructional materials for Emerging Bilingual students; to develop State Education Agency capacity to lead and oversee bilingual and English as a second language instructional programs; and to conduct research on the best instructional practices for Emerging Bilingual students. A national clearinghouse for bilingual education was also authorized to collect and disseminate information on the Emerging Bilingual population and services available to them.

The purpose and role of native language instruction was a contentious issue throughout Title VII’s history. Most educational researchers and advocates for language-minority students argued that native language instruction not only facilitated timely academic content learning by Emerging Bilingual students but also their English language development. Some proponents of native language instruction went further and argued that bilingualism and biliteracy were independently worthy educational objectives while still others argued that bilingual education was a fundamental human right recognized by international laws to protect minority-language people. Opponents of native language instruction employed assimilationist appeals to “Americanism” or reductive “time on task” arguments to argue for English-immersion pedagogies.

No Child Left Behind Act

In January of 2002, President George W. Bush signed into law the No Child Left Behind (NCLB) Act, the most recent reauthorization of the Elementary and Secondary Education Act. The No Child Left Behind Act mandated sweeping changes in educational policy and practice at the state, local, and classroom levels. The stated intent of the changes was to increase accountability in public education and to ensure that student characteristics, including race, economic status, disability, or language background, were not determinative of student academic success and educational attainment.

To achieve accountability, The No Child Left Behind Act mandated annual standardized testing of virtually all elementary and middle school students and prescribed an array of specific sanctions for schools whose students failed to “measure up.” Now, after more than a decade of experience under the No Child Left Behind Act, there is general agreement that the law’s accountability paradigm and educational prescriptions are fundamentally flawed and have not significantly improved public schooling for students.

The No Child Left Behind Act’s Impact on Programs for Emerging Bilingual Students

No Elementary and Secondary Education Act program was altered by No Child Left Behind more than Title VII (of the Elementary and Secondary Education Act), the only federal program

specifically designed to meet the unique needs of Emerging Bilingual students. The No Child Left Behind Act eliminated the competitive grant programs authorized under (the old) Title VII in favor of a new formula-funded program, No Child Left Behind's Title III. Although funding for the new Title III program was approximately 50 percent greater than the amount previously appropriated for Title VII, No Child Left Behind radically impacted the distribution and use of limited federal funds.

First, while the switch from a competitive grant program to a formula grant program produced equity in the distribution of available funds, it negatively affected program effectiveness according to many directors of programs for Emerging Bilingual Students. Title VII grants were concentrated and allowed schools to make the multiple systemic improvements required for program effectiveness. With a formula-determined allocation of approximately \$150 per pupil, Title III support became insufficient to institute the curricular, training, personnel, instructional materials and program evaluation changes required to provide effective instruction to Emerging Bilingual students. Indeed, according to some Title III program directors, the administrative and testing costs associated with Title III's accountability requirements consume most of a school's per-pupil grant leaving few resources to actually improve instruction.

Second, No Child Left Behind slashed funding for professional development, and completely eliminated funding for the graduate fellowships which guaranteed a supply of college and university personnel to carry out research on Emerging Bilingual Student education and to train teachers on effective instructional methods and techniques for Emerging Bilingual students. In fiscal year 2000, more than \$71.4 million was appropriated for Title VII professional development programs, and graduate fellowship programs received \$4.9 million. For fiscal year 2013, Title III appropriations for professional development, before sequestration, equaled only \$42.4 million with no money allocated for graduate education programs.

But the most significant change in Emerging Bilingual Student education under No Child Left Behind was the relative emphasis placed on English language acquisition at the expense of comprehensive educational attainment. The wording of the statute symbolized this shift with all references to "bilingual" or "native language" stricken and replaced by "English language acquisition." Because Title III requires schools to measure how rapidly students are developing English proficiency, it incentivizes narrow language-centric instruction at the expense of balanced comprehensive instruction that includes academic content. The No Child Left Behind Act's primary benefit for Emerging Bilingual students – the disaggregation of student educational achievement and attainment data by language status – has served to document public education's failure to educate them effectively but has done little to remedy the problem.

¹ The reader should note that education in the United States is preeminently a function of state and local governments and that federal funds constitute less than eleven percent (11%) of all spending for elementary and secondary schooling. See U.S. Department of Education webpage "The Federal Role in Education," <http://www2.ed.gov/about/overview/fed/role.html>, accessed May 16, 2013.

² S. 428, 90th Cong., 1st sess. (1967).

³ U.S. Congress, Senate, Committee on Labor and Public Welfare, Special Subcommittee on Bilingual Education, *Hearings on S. 428, 90th Cong., 1st Sess. 1967*, pp. 1-2

⁴ *Ibid.*, p.2.

IV Emerging Bilingual Students

More than 11 million students — *one of every five* — enrolled in U.S. schools speak a language other than English which they have learned from their parents, guardians, family members and caregivers.¹ Approximately half of these students are classified as “LEP” meaning that their “limited English skills” prevent full and effective participation in educational programs designed for English proficient students.²

For more than two decades, the Emerging Bilingual student population has experienced phenomenal growth. According to Education Department data (see table below), the enrollment of Emerging Bilingual students in elementary and secondary schools increased from 2 million students to nearly 3.5 million students between school years 1989-1990 and 1997-1998. This growth rate of more than 70 percent was more than five times the rate of growth for total elementary and secondary school enrollment. In the following decade leading up to the 2008 presidential election, the Emerging Bilingual student population increased again by 53 percent to more than 5.3 million.³

| School Year | K-12 Total Enrollment | % Total Enrollment Increase | LEP Students | % LEP Student Increase | LEP Students as % of Total Enrollment |
|-------------|--------------------------|--------------------------------|--------------|---------------------------|--|
| 1989-90 | 40,608,842 | | 2,030,451 | | 5.0% |
| 1997-98 | 46,023,969 | 13.3% | 3,470,268 | 70.9% | 7.5% |
| 2007-08 | 49,914,453 | 8.5% | 5,318,164 | 53.2% | 10.7% |

This population growth is projected to continue, and the U.S. Department of Education predicts that Emerging Bilingual students will constitute one-quarter of the nation’s K-12 school enrollment by 2025.⁴

The following tables⁵ present three different perspectives of the Emerging Bilingual student population by state: 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

| State | Total Pre-K-12 Enrollment 2007-2008 | ELL Enrollment 2007-2008 | % ELLs among all Pre-K-12 Students | ELL Enrollment 1997-1998 | % Change in ELL Enrollment from 1997-1998 |
|----------------------|-------------------------------------|--------------------------|------------------------------------|--------------------------|---|
| United States | 49,914,453 | 5,318,164 | 10.7 | 3,470,268 | 53.2 |
| California | 6,275,445 | 1,526,036 | 24.3 | 1,406,166 | 8.5 |
| Texas | 4,674,832 | 701,799 | 15.0 | 507,262 | 38.4 |
| Florida | 2,666,811 | 234,934 | 8.8 | 243,766 | -3.6 |
| New York | 2,765,435 | 213,000 | 7.7 | 219,868 | -3.1 |
| Illinois | 2,112,805 | 175,454 | 8.3 | 136,186 | 28.8 |
| Arizona | 1,087,447 | 166,572 | 15.3 | 112,522 | 48.0 |
| Nevada | 429,362 | 134,377 | 31.3 | 30,425 | 341.7 |
| North Carolina | 1,458,035 | 106,180 | 7.3 | 28,709 | 269.8 |
| Washington | 1,030,247 | 94,011 | 9.1 | 56,921 | 65.2 |
| Virginia | 1,230,857 | 89,968 | 7.3 | 24,876 | 261.7 |
| Colorado | 801,867 | 82,347 | 10.3 | NA | NA |
| Georgia | 1,649,589 | 72,613 | 4.4 | 20,944 | 246.7 |

Table 2. Top 12 States with Highest Share of ELL Enrollment, 2007-2008

| State | Total Pre-K-12 Enrollment 2007-2008 | ELL Enrollment 2007-2008 | % ELLs among all Pre-K-12 Students | ELL Enrollment 1997-1998 | % Change in ELL Enrollment from 1997-1998 |
|----------------------|-------------------------------------|--------------------------|------------------------------------|--------------------------|---|
| United States | 49,914,453 | 5,318,164 | 10.7 | 3,470,268 | 53.2 |
| Nevada | 429,362 | 134,377 | 31.3 | 30,425 | 341.7 |
| California | 6,275,445 | 1,526,036 | 24.3 | 1,406,166 | 8.5 |
| New Mexico | 329,459 | 60,624 | 18.4 | 71,429 | -15.1 |
| Arizona | 1,087,447 | 166,572 | 15.3 | 112,522 | 48.0 |
| Texas | 4,674,832 | 701,799 | 15.0 | 507,262 | 38.4 |
| Alaska | 131,029 | 17,513 | 13.4 | 22,087 | -20.7 |
| Oregon | 565,586 | 65,314 | 11.5 | 30,768 | 112.3 |
| Colorado | 801,867 | 82,347 | 10.3 | NA | NA |
| Hawaii | 179,897 | 17,868 | 9.9 | 12,869 | 38.8 |
| Utah | 576,244 | 52,635 | 9.1 | 38,269 | 37.5 |
| Washington | 1,030,247 | 94,011 | 9.1 | 56,921 | 65.2 |
| Florida | 2,666,811 | 234,934 | 8.8 | 243,766 | -3.6 |

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

| State | Total Pre-K-12 Enrollment 2007-2008 | ELL Enrollment 2007-2008 | % ELLs among all Pre-K-12 Students | ELL Enrollment 1997-1998 | % Change in ELL Enrollment from 1997-1998 |
|----------------------|-------------------------------------|--------------------------|------------------------------------|--------------------------|---|
| United States | 49,914,453 | 5,318,164 | 10.7 | 3,470,268 | 53.2 |
| South Carolina | 712,319 | 28,548 | 4.0 | 3,077 | 827.8 |
| Indiana | 1,046,766 | 46,417 | 4.4 | 9,114 | 409.3 |
| Nevada | 429,362 | 134,377 | 31.3 | 30,425 | 341.7 |
| Arkansas | 479,016 | 26,003 | 5.4 | 6,717 | 287.1 |
| North Carolina | 1,458,035 | 106,180 | 7.3 | 28,709 | 269.8 |
| Virginia | 1,230,857 | 89,968 | 7.3 | 24,876 | 261.7 |
| Delaware | 122,574 | 6,831 | 5.6 | 1,957 | 249.1 |
| Georgia | 1,649,589 | 72,613 | 4.4 | 20,944 | 246.7 |
| Alabama | 744,516 | 19,508 | 2.6 | 5,751 | 239.2 |
| Kentucky | 666,225 | 12,919 | 1.9 | 3,878 | 233.1 |
| Tennessee | 964,259 | 25,449 | 2.6 | 8,465 | 200.6 |
| Ohio | 1,827,184 | 38,026 | 2.1 | 13,867 | 174.2 |

Emerging Bilingual students 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 Emerging Bilingual student population is linguistically diverse, speaking virtually every world language and many that are indigenous to this country. Native Alaskan, Native American, and Native Hawaiian languages are the dominant languages of Emerging Bilingual students in Alaska, Hawaii, Montana, North Dakota, and South Dakota.

Approximately three out of four Emerging Bilingual students speak Spanish, the dominant language of the U.S. Southwest prior to acquisition from Mexico and the language of roughly half of the people in the Western Hemisphere.⁶ According to the National Council of La Raza, “nearly half (45%) of all Latino children are ELL [Emerging Bilingual] students in our nation’s public schools.”⁷ The next four languages most commonly spoken by students are Chinese, Vietnamese, French/Haitian Creole, and Hindi & related languages.⁸ Contrary to popular opinion, most Emerging Bilingual students were born in the United States.

Most Emerging Bilingual 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 abbreviated schooling in their native countries if they are immigrants, or as a result of having been denied an equal educational opportunity in U.S. schools if they are native-born citizens. Finally, Emerging Bilingual students represent the most educationally needy group of students in the United States.

In addition to learning the academic content taught in our schools, they must also master English, a new language.

Standardized Test Scores of Emerging Bilingual Students

Emerging Bilingual students score at low levels on state and local standardized academic achievement tests administered in English. While the No Child Left Behind-mandated state tests vary significantly in their performance standards, the National Assessment of Educational Progress (NAEP) provides a uniform instrument for measuring and comparing the scores of students nationally. National Assessment of Educational Progress test results show large disparities in the scores of Emerging Bilingual and English-proficient students in reading and mathematics.⁹

It should be noted that scores on the National Assessment of Educational Progress and scores on local and state standardized assessments show similar results. Many, including those in the educational community, point to these scores as proof of an “achievement gap”. Three factors make this conclusion problematic. Content assessments, given in English, to students who are not proficient in English may be measures of English language acquisition and not measures of mathematics, science, or even of reading skills. Second, once a student is re-designated as fully English proficient, that student is removed from the Emerging Bilingual student category. The “successes” are removed from the Emerging Bilingual student category and their data are not reflected as achievement data for that group thus depressing the scores for that group. The third factor that confounds any comparisons between native English and Emerging Bilingual student scores is the lack of uniformity in the definitions of English proficiency across the states. A student may be defined as being at or above proficient in English and be considered to have the same English language skills as a native English speaker in one state and be defined as non-proficient in English in another state. These inconsistencies in the inclusion or exclusion of students from a particular group make conclusions of “achievement gaps” based on standardized test scores highly suspect.

What can be said, however, is that there is proof of an “opportunity to learn” gap which Emerging Bilingual students confront in many schools. Emerging Bilingual 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;¹⁰
- are more often forced to repeat grades than their native English speaking counterparts;
- have a school dropout rate estimated to be twice that of native-English-speaking students.¹¹

The failure of U.S. schools to provide Emerging Bilingual students with an effective education is a systemic national problem. The on-going growth of this student population

increases the importance and urgency of solving this national problem.

¹ U.S. Department of Education, National Center for Education Statistics, *The Condition of Education 2011*, (2012), Washington, D.C., <http://nces.ed.gov/fastfacts/display.asp?id=96>

² National Clearinghouse on English Language Acquisition, *Fast Faq -- How has the English language learner (ELL) population changed in recent years?* (2011) Washington, D.C., http://www.ncele.gwu.edu/files/rcd/BE021773/How_Has_The_Limited_English.pdf

³ Ibid.

⁴ U.S. Department of Education, *Building Partnerships to Help English Language Learners*, (2006) Washington, D.C., <http://www2.ed.gov/nclb/methods/english/lepfactsheet.html>

⁵ Tables Source: Migration Policy Institute, ELL Information Center, *Fact Sheets*, Washington, D.C. <http://www.migrationinformation.org/integration/ellcenter.cfm>

⁶ Migration Policy Institute, ELL Information Center, Fact Sheet # 3, Washington, D.C. http://www.migrationinformation.org/ellinfo/FactSheet_ELL3.pdf

⁷ Kohler, Adriana D. and Lazarin, Mellisa, *Hispanic Education in the United States*, National Council of La Raza, Washington, D.C. 2007 http://www.nclr.org/images/uploads/publications/file_SB8_HispEd_fnl.pdf

⁸ Migration Policy Institute, *op cit*.

⁹ U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, *2009 Results of the National Assessment of Educational Progress*. Washington, D.C. <http://nces.ed.gov/nationsreportcard>

¹⁰ Mikutis, Megan, "Disproportionate Numbers of Minorities and English Learners in Special Education Programs," *Children and the Law Blog*, University of Houston, 2013 <http://childrenandthelawblog.com/?p=2379>

¹¹ Callahan, Rebecca M., *The English Learner Dropout Dilemma: Multiple Risks and Multiple Resources*, California Dropout Research Project, UC Santa Barbara, 2013 http://www.cdrp.ucsb.edu/pubs_reports.htm

V

**Education Department Leadership
and Administration of Programs for Emerging Bilingual Students**

Many, if not most, of the advocates for Emerging Bilingual students and the educators who serve them were optimistic that President Obama would deliver on the “change” he promised during the 2008 campaign. They hoped that the new administration would eventually replace No Child Left Behind’s narrow emphasis on English development with support for dual language instructional programs which build upon, develop, and share with monolingual English students in two-way programs the native language skills of Emerging Bilingual students. After all, candidate Obama had spoken in passionate terms during the campaign about the need to help all American children “become bilingual or trilingual” so that the U.S. could successfully compete in the global economy.¹ Fulfillment of this change, however, would obviously take time and would require the cooperation of congress in reauthorizing and rewriting the Elementary and Secondary Education Act, already more than a year overdue when President Obama took office.

A more immediate opportunity to improve educational opportunities for Emerging Bilingual students concerned the political appointment of a new director for the Office of English Language Acquisition, the office responsible for the No Child Left Behind’s Title III program. Education practitioners and civil rights advocates were anxious to return to the Title III office full responsibility for the programs authorized by law following a controversial 2008 decision by then-Secretary Margaret Spellings to shift authority and personnel responsible for the Title III grant program to the Office of Elementary and Secondary Education, the Education Department unit responsible for No Child Left Behind’s Title I.² A new Office of English Language Acquisition director, advocates believed, could reassert the importance of better serving Emerging Bilingual students and reinvigorate Title III programs in the Education Department.

Political appointees play a valuable and vital role in the federal government. They bring “real world” experience to office which is sometimes in short supply. They also supplement the professional expertise possessed by civil servants. Most importantly, political appointees serve as the administration’s ambassadors to the communities served by the government and are expected to represent the constituencies served by the programs they direct and to advocate for their interests and needs. In the case of the Office of English Language Acquisition directorship, No Child Left Behind actually refers to this role. Title III states:

The Secretary shall provide for continuing consultation and collaboration, between the Office of English Language Acquisition...and relevant programs operated by the Department ...to ensure effective program coordination to provide high-quality educational opportunities to all language-minority and limited English proficient children.³

Because the consultative, collaborative function is particularly important in the development of the new policies and initiatives of a nascent administration, the Emerging Bilingual student

educational community was eager to have a qualified political appointee named to direct the Office of English Language Acquisition quickly.

The Obama Administration, however, did not share the community's sense of urgency. Dr. Rosalinda Barrera was named Director of the Office of English Language Acquisition on August 23, 2010 – more than a year and a half after Arne Duncan was confirmed as Secretary of Education. To make matters worse, Dr. Barrera resigned the position effective October 19, 2012, and no successor was named until Dr. Libia Gil was appointed to the position on September 13, 2013. The fact that the political appointee leadership of the only Education Department office directly responsible for Emerging Bilingual students has been vacant longer than occupied betrays a dismaying lack of interest in this student population.

The prolonged absence of a politically-appointed director deprived the Emerging Bilingual community of an advocate during formulation of several of the president's proposed budgets for the Education Department and the development of administration education initiatives. During this period, the administration developed major new elementary and secondary education programs including the Race to the Top and Investing in Innovation competitive grant programs with \$5 billion in American Recovery and Reinvestment Act funding. Because the American Recovery and Reinvestment Act of 2009 provided few details regarding these programs, Secretary Duncan had substantial discretion in developing the programmatic definitions, requirements, priorities, and selection criteria utilized to choose winners. One can only speculate whether the Race to the Top competition was designed to serve Emerging Bilingual students as well as other students. The fact is that nearly 73 percent – almost three-quarters -- of the nation's Emerging Bilingual students attend schools in a state which did not receive a Race to the Top award.⁴

Finally, the absence of a politically appointed Office of English Language Acquisition director may help explain the failure to prepare in a timely fashion the biennial reports that Title III requires be sent to the Secretary, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate:

- *on programs and activities carried out to serve limited English proficient children and the effectiveness of such programs and activities in improving the academic achievement and English proficiency of children who are limited English proficient;*
- *containing a critical synthesis of data reported by States;*
- *containing an estimate of the number of certified or licensed teachers working in language instruction educational programs and educating limited English proficient children, and an estimate of the number of such teachers that will be needed for the succeeding 5 fiscal years; and*
- *containing the major findings of scientifically based research carried out under this part.*⁵

So far in the Obama Administration, the Office of English Language Acquisition has produced but two of the required Biennial reports, reports on school years 2006-2008 and 2008-2010.

While Secretary Duncan may be privy to the important information and data which the biennial reports are required to present, Congress is not, and the interests and needs of the nation's fastest growing student population are obscured.

¹ Campaign appearances in Thornton, CO on May 28, 2009 and Powder Springs, GA on July 8, 2009.

² Zehr, Mary Ann "Ed Department Puts Title I and Title III Under Same Administration," *ED Week*, June 17, 2008 and letter referenced therein which can be accessed at http://www.edweek.org/media/blog-title_iii_sign_on_opposition_to_title_iii_move-zehr.pdf

³ Public Law 107-110, Title III. <http://www2.ed.gov/policy/elsec/leg/esea02/index.html>

⁴ Author's tabulation of NCES data presented in Table 47 Number and percentage of public school students participating in programs for English language learners, by state for school year 2010-11 http://nces.ed.gov/programs/digest/d12/tables/dt12_047.asp

⁵ Title III, *Ibid.*

VI Resources for Schools Serving Emerging Bilingual Students

On February 17, 2009, less than one month after his inauguration, President Obama signed into law the American Recovery and Reinvestment Act of 2009. The law authorized an estimated \$840 billion of federal spending and tax cuts to stimulate an economy that was in near free-fall. Approximately \$92 billion of this amount was devoted to education,¹ with approximately \$16.5 billion devoted to increased funding for Pell Grants for college students.² Although an American Recovery and Reinvestment bill was introduced in Congress before President Obama's inauguration, the Administration had substantial input regarding the final bill's content.

The following table, taken from a 2010 U.S. General Accountability Office report³, shows how American Recovery and Reinvestment Act funds were distributed for elementary and secondary education programs.

| Dollars in thousands | |
|--|---|
| Program name | Funding Recovery Act (fiscal year 2009) |
| Department of Education | |
| 1. State Fiscal Stabilization Fund ^{a, b} | \$48,600,000 |
| 2. Title I Grants to Local Educational Agencies | 10,000,000 |
| 3. Special Education: Grants to States | 11,300,000 |
| 4. Race to the Top (Incentive Grants) ^b | 4,350,000 |
| 5. School Improvement Grants | 3,000,000 |
| 6. Educational Technology State Grants | 650,000 |
| 7. Innovation Fund ^b | 650,000 |
| 8. Special Education-Grants for Infants and Families with Disabilities | 500,000 |
| 9. Special Education-Preschool Grants | 400,000 |
| 10. Teacher Incentive Fund | 200,000 |
| 11. Teacher Quality Partnership Grants Program | 100,000 |
| 12. Education for Homeless Children and Youth | 70,000 |

Thus, while the American Recovery and Reinvestment Act included money for a dozen elementary and secondary school programs, it did not provide any funds for No Child Left Behind's Title III, the only federal education program specifically designed to help Emerging Bilingual students and schools experiencing a recent increase in immigrant student enrollment. The American Recovery and Reinvestment Act totally ignored the profound educational needs of the fastest growing segment of the Kindergarten -12th grade student population and the schools which serve them.

As the following table taken from the Education Department’s Fiscal Year 2014 Budget Justification⁴ makes clear, the Obama Administration has not pushed to increase appropriations for the Title III program from prior year levels except in Fiscal Year 2011 and Fiscal Year 2012 in the five budgets (Fiscal Years 2010 – 2014) the President has sent to Congress. Indeed, Congress appropriated more than the President requested in his first budget (Fiscal Year 2010).

ENGLISH LEARNER EDUCATION

Appropriations History
(dollars in thousands)

| Year | Budget Estimate to Congress | House Allowance | Senate Allowance | Appropriation |
|------|-----------------------------|----------------------|----------------------|----------------------|
| 2005 | 681,215 | 681,215 | 700,000 | 675,765 |
| 2006 | 675,765 | 675,765 | 683,415 | 669,007 |
| 2007 | 669,007 | N/A ¹ | N/A ¹ | 669,007 ¹ |
| 2008 | 670,819 | 774,614 | 670,819 | 700,395 |
| 2009 | 730,000 | 730,000 ² | 730,000 ² | 730,000 |
| 2010 | 730,000 | 760,000 | 750,000 ³ | 750,000 |
| 2011 | 800,000 | 750,000 ⁴ | 800,000 ³ | 733,530 ⁵ |
| 2012 | 750,000 | 733,531 ⁶ | 733,530 ⁶ | 732,144 |
| 2013 | 732,144 | 732,144 ⁷ | 732,144 ⁷ | 732,144 ⁸ |
| 2014 | 732,144 | | | |

¹ This account operated under a full-year continuing resolution (P.L. 110-5). House and Senate allowances are shown as N/A (Not Available) because neither body passed a separate appropriations bill.

² The levels for the House and Senate allowances reflect action on the regular annual 2009 appropriations bill, which proceeded in the 110th Congress only through the House Subcommittee and the Senate Committee.

³ The level for the Senate allowance reflects Committee action only.

⁴ The level for the House allowance reflects the House-passed full-year continuing resolution.

⁵ The level for appropriation reflects the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (P.L. 112-10).

⁶ The level for the House allowance reflects an introduced bill; the level for the Senate allowance reflects Senate Committee action only.

⁷ The level for the House and Senate allowances reflect action on the regular annual 2013 appropriations bill, which proceeded in the 112th Congress only through the House Subcommittee and the Senate Committee.

⁸ The amount shown includes the 0.612 percent across-the-board increase provided by P.L. 12-175, in effect through March 27, 2013.

After subtracting the approximately \$50 million set aside for teacher training programs, grants to education agencies serving Native American students, a National Clearinghouse on English Language Acquisition, and program evaluations specified in Title III, school districts receive approximately \$150 from Title III to support each Emerging Bilingual student they enroll. This amount does not cover a fraction of the true costs associated with the instruction and support of Emerging Bilingual students; it may not even meet the cost of compliance with the numerous administrative and assessment requirements specified in the No Child Left Behind Act applicable to Emerging Bilingual students.

In 2002, the National Conference of State Legislatures conducted a study for the Arizona Legislative Council of the “incremental” cost of educating Arizona’s Emerging Bilingual students; that is the costs above educating English-proficient students in the state. The National Conference of State Legislatures study, published in 2005, found that the “incremental” cost of instructing Emerging Bilingual students ranged between \$1,026 and \$2,571 depending on student grade level and individual student language development needs.⁵

The federal government’s failure to provide adequate financial support for the equal and effective education of Emerging Bilingual students will continue to impose economic and social costs on the nation that are unsustainable.

¹ <http://www.recovery.gov/Transparency/fundingoverview/Pages/contractsgrantsloans-details.aspx#Education>

² *Ibid.*

³ U.S. Government Accountability Office, *FEDERAL EDUCATION FUNDING - Overview of K-12 and Early Childhood Education Programs*, (2010), Washington, D.C. <http://www.gao.gov/new.items/d1051.pdf>

⁴ <http://www2.ed.gov/about/overview/budget/budget14/justifications/i-ela.pdf>

⁵ National Conference of State Legislatures, *Arizona English Language Learner Cost Study*, (2005), Denver, CO. <http://www.schoolfunding.info/states/az/AZ-NCSLenglanglearn2005.pdf>

VII

The Role of Language Barriers for Hispanic Students

The Education Department's unwillingness to acknowledge the role of language barriers was driven home by its handling of the National Center for Educational Statistics report "Achievement Gaps: How Hispanic and White Students in Public Schools Perform in Mathematics and Reading" released in June, 2011.¹

The report included, on pages 42-43, the reading and math scores of 4th and 8th graders on the National Assessment of Educational Progress from 1998 to 2009 for three groups of students: White students, Hispanic students who schools consider English proficient, and Hispanic students who schools consider to be Emerging Bilingual students.

More than 11 million Hispanic students attended public schools in 2009 (22 percent of total student enrollment) and roughly equal numbers were classified as English proficient and Emerging Bilingual. According to the National Council of La Raza, almost half of all Hispanic students are Emerging Bilingual students. Because Emerging Bilingual students are reclassified as English proficient when they are deemed by schools to no longer be limited in their English proficiency, the actual proportion of Hispanic students who are designated Emerging Bilingual at some point in their matriculation is substantially greater than half.

The Education Department termed the report "sobering." "Tragic" would be a more apt characterization of its content. The report found that while the scores of White students and Hispanic students had risen between 1998 and 2009, what they termed "the achievement gap" separating the two groups had not diminished significantly.

A *Time Magazine* article led off with the report's dire findings and then zeroed in on the primary cause of the "Hispanic achievement gap."

A newly released report on student achievement finds that members of the nation's second largest ethnic group are still woefully underperforming their white counterparts.

...

Although the report focuses on the achievement of an entire ethnic group, the numbers suggest that the persistent gap has more to do with the language barrier among a subset of that group.... For example, in eighth grade reading, the discrepancy between ELL Hispanic students and non-ELL Hispanic students was 39 points, or roughly four whole grade levels.²

When *Education Week* reporter Sarah Sparks questioned officials of the Department of Education about the salience of English language proficiency in explaining much of the "Hispanic achievement gap," she reported that

NCES [National Center for Education Statistics] Commissioner Sean P. “Jack” Buckley said he would balk at saying English-language gaps are a bigger issue than racial disparities, in part because each state can use different accommodations for English-language learners taking the assessment.³

The reluctance of the National Center for Education Statistics Commissioner Buckley, a political appointee, to address the magnitude of the test score gap attributable to language barriers is disingenuous and misleading. His statement is counter-factual because the effect, if any, of the testing accommodations permitted for Emerging Bilingual students is to increase, not to decrease, their National Assessment of Educational Progress scores thereby minimizing gaps separating them from White students.

What neither the *Time Magazine* nor the *Education Week* articles discussed is the likelihood that the poor performance of “non-ELL Hispanic” students is also a function of language. Court decisions and U.S Office for Civil Rights investigations by the Education Department and the Department of Justice document a disturbing tendency of school districts to reclassify Emerging Bilingual students as English proficient and to terminate language-development instruction before students have mastered the academic English required for academic success.

The Education Department’s press release on the National Assessment of Educational Progress Hispanic achievement gap report was completely mute on the matter of language. It read in pertinent part:

U.S. Education Secretary Arne Duncan today urged parents, educators and school leaders at every level of government to make Hispanic educational excellence a national priority.

....

“Race and ethnicity shouldn’t be factors in the success of any child in America,” said Secretary Duncan. “Hispanic students are the largest minority group in our nation’s schools. But they face grave educational challenges that are hindering their ability to pursue the American dream. We must expand their educational opportunities at every level of the P–12 system to compete with the rest of the world.”⁴

Race and ethnicity shouldn’t be factors in the success of any child in America, as Duncan stated, and neither should a child’s English language proficiency classification be a factor in his or her educational success. That is at the heart of the policy first enunciated by the Department of Health, Education and Welfare in 1970, affirmed by the United States Supreme Court 39 years ago in *Lau v. Nichols*, and codified by Congress in the Equal Educational Opportunities Act of 1974.

Language barriers contribute to the “Hispanic achievement gap” and all public schools have an affirmative legal obligation to help students overcome language barriers. The United States Department of Education should provide the expertise and resources required to help public schools raze the language barriers which impede academic success for Hispanic and other Emerging Bilingual students.

¹ Report can be accessed at <http://nces.ed.gov/nationsreportcard/pdf/studies/2011459.pdf>.

² “The Achievement Gap: Why Hispanic Students Are Still Behind,” *Time Magazine*, June 23, 2011. Can be accessed at <http://www.time.com/time/nation/article/0,8599,2079429,00.html#ixzz2Yelq6mNU>.

³ “20-Year Hispanic Academic Gaps Persist in Math, Reading,” *Education Week*, July 13, 2011, can be accessed at <http://www.edweek.org/ew/articles/2011/07/13/36hispanic-2.h30.html?qs=hispanic+naep>

⁴ Press release “U.S. Education Secretary Duncan Challenges Nation to Work Together to Make Hispanic Educational Excellence a Priority,” June 23, 2011, Washington, DC. Can be accessed at <http://www.ed.gov/news/press-releases/us-education-secretary-duncan-challenges-nation-work-together-make-hispanic-educ>

VIII

Race to the Top and Equal Educational Opportunity

Education Secretary Arne Duncan has repeatedly said that “education is the civil rights issue of our generation.” It is clear that education has been a civil rights issue for prior generations of Americans, and that our past failure to secure equality of educational opportunity for all students is one of the root causes of many of the educational, social, and economic problems that confront us today.

Educational equity and educational excellence are so closely intertwined that neither can be fully achieved without the other. But the accomplishment of one of these twin objectives – equity or excellence – does not automatically advance the other. While equity and excellence are related, each must be simultaneously pursued in a deliberate, systematic, and sustained fashion.

Recognizing this reality, many in the civil rights community have questioned the Obama Administration’s approach to educational reform and improvement. The Administration’s emphasis on “market-like” competition to effectuate school improvement drew fire in a July, 2010 statement by seven civil rights groups. The civil rights groups’ statement singled out the Race to the Top competition for its fiercest criticism:

If education is a civil right, children in "winning" states should not be the only ones who have the opportunity to learn in high quality environments. Such an approach reinstates the antiquated and highly politicized frame for distributing federal support to states that civil rights organizations fought to remove in 1965.

The implementation of the Race to the Top Fund’s grant process highlights our concerns about an approach to education funding that relies too heavily on competition: only fifteen states and the District of Columbia were on the shortlist in the first round to be “eligible” for possible funding.

These finalist states contain only 37% of the students in the United States eligible for free and reduced lunch.... 74% of Hispanic students live outside finalist states. While 53% of Black students in the United States are in the finalist states, losing 47% of the Black students places a huge economic burden on the country. Overall, 42% or 12.5 million of the nation’s children would be left behind.¹

Although the statement was the product of organizations which have historically been primarily concerned with the civil rights of African Americans, it directly addressed the needs of Emerging Bilingual students.

The federal government should also require states and school districts to provide substantive opportunities to learn for ELL [Emerging Bilingual] students through linguistically appropriate and culturally relevant methods and content. In addition, the federal government must support the elimination of “English-only” and other culturally

*subversive policies that impede all students from having a fair and substantive opportunity to learn.*²

Race to the Top & Emerging Bilingual Students

The following month, attorney Roger Rice, co-director of the Massachusetts-based legal organization Multicultural Education, Training & Advocacy (META) sent Secretary Duncan a letter about Emerging Bilingual students and the Race to the Top program.³ He wrote:

The Race To the Top grant competition holds substantial promise for improving the education of English Language Learner (ELL) students. However, this promise will not be realized if, in the selection process, the Department ignores its own regulations and, rewards states that demonstrably have failed to narrow the ELL/Non-ELL achievement gap.

Mr. Rice's letter reviewed the results of his organization's analysis of the achievement gap in the Race to the Top finalist states as measured by the 2003 and 2009 National Assessment of Educational Progress results for reading and mathematics in grades 4 and 8 noting

Among the finalist states, Arizona showed the greatest increases in the ELL achievement gap since 2003, with the gap widening in both reading and math at both grades 4 and 8.... The ELL achievement gap also increased in California and Massachusetts in both subjects and both grades but not by as much as in Arizona.

Mr. Rice did not point out in his letter to Secretary Duncan that among the Race to the Top finalists, the three states with the worst record of a widening achievement gap separating Emerging Bilingual and native-English students between 2003-2009 – Arizona, California, and Massachusetts – had, because of ballot initiatives passed between 1998-2002, replaced bilingual instruction with English-only structured English immersion instruction, the kind of “subversive” educational programs decried by the civil rights groups.

Mr. Rice's letter was quickly followed by one from the Education Taskforce of the National Association of Latino Elected and Appointed Officials (NALEO) urging the Education Department to place more weight on the Emerging Bilingual, non-Emerging Bilingual achievement gap in future grant competitions. The National Association of Latino Elected and Appointed Officials' letter restated concerns previously communicated to Secretary Duncan in March of 2010 “that state applicants are not required to offer a comprehensive ELL strategy as part of their application for RTTT funds.”⁴

Massachusetts received the highest score of any state in the Phase 2 round of the Race to the Top competition, and was notified that it had won a coveted grant on August 24, 2010. News reports lauded Massachusetts for having the highest National Assessment of Educational Progress test scores in the nation, and Secretary Duncan has spoken, as recently as February, 2012, of Massachusetts as a model for the nation.⁵

There is no record of Secretary Duncan ever speaking publicly about Massachusetts' monumental opportunity gap. National Assessment of Educational Progress scores for 2009, which were not included in Massachusetts's Race to the Top application, showed large and persistent gaps in scores in all areas between Emerging Bilingual and non-Emerging Bilingual peers.⁶ And throughout the 2009-2012 period, the dropout rate for Massachusetts Emerging Bilingual students was three times as high as for non-Emerging Bilingual students.⁷

On July 22, 2011, less than one year after the U.S. Education Department congratulated Massachusetts on winning a Race to the Top grant, the U.S. Department of Justice sent state education officials a thirteen-page letter detailing its findings that state schools deny Emerging Bilingual students their right to an effective education guaranteed by the 1974 Equal Educational Opportunities Act.⁸ According to the Department of Justice, as many as 45,000 Massachusetts teachers lack required training to instruct the Emerging Bilingual students in their classrooms. Massachusetts did not contest the Department of Justice findings, and has embarked on a program to achieve compliance by sometime in 2016.

¹Lawyers Committee for Civil Rights under Law, National Association for the Advancement of Colored People (NAACP), NAACP Legal Defense and Educational Fund, Inc., National Council for Educating Black Children, National Urban League, Rainbow PUSH Coalition, and Schott Foundation for Public Education, "Framework for Providing All Students an Opportunity to Learn through Reauthorization of the Elementary and Secondary Education Act," July, 2010, p. 4. Can be accessed at

<http://www.otlcampaign.org/sites/default/files/resources/CivilRights%20framework-FINAL7-25-10.pdf>

² *Ibid.*, p. 13-14.

³ Roger Rice, Letter to Secretary Arne Duncan, August 10, 2010, unpublished.

⁴ Letter can be accessed at http://www.edweek.org/media/latino_officialtaskforce_rttt_criteria_letter.pdf

⁵ See, for example, Remarks of Secretary Duncan at the Askwith Forum, Harvard Graduate School of Education, February 7, 2012 which can be accessed at <http://www.ed.gov/news/speeches/fighting-wrong-education-battles>

⁶ "2009 NAEP Reading Report for Massachusetts," Institute for Educational Sciences, U.S. Department of Education, Washington, DC. Can be accessed at <http://www.doe.mass.edu/mcas/naep/results/09reading.pdf>

⁷ See <http://www.doe.mass.edu/infoservices/reports/dropout/2011-2012/summary.pdf>.

⁸ See <http://www.edweek.org/media/eeoacompliance-05mass.pdf>

IX

The Teachers of Emerging Bilingual Students

While disputes seem endemic to most topics associated with public education, there is one matter about which virtually everyone agrees: effective education requires quality teaching. Teacher attitudes, competencies, knowledge, and skills are fundamental determinants of student learning, and teacher preparation and professional development are powerful levers to improve educational outcomes.

Emerging Bilingual students have all the needs of other American students – some are gifted and talented, some have disabilities, and a disproportionate number of them are poor. They are expected to learn all the subjects taught in school and to meet the same academic standards as native-English-speaking students. At the same time, they must master a new language, something few Americans (including their teachers) achieve during their lifetimes.

One would think that Emerging Bilingual students would be assigned to the best trained and qualified teachers. But such is not the case. Indeed, far too many of these educationally needy and vulnerable students are taught by teachers who are professionally unprepared to meet their instructional needs. According to the National Council of Teachers of English, fewer than 13% of all teachers have received specialized training in the instruction of Emerging Bilingual Students.¹

For more than a decade, English as a second language and bilingual education teachers have figured prominently on the state-based data compiled by the federal Education Department for the “Teacher Shortage Area Nationwide List.”² For school year 2009- 2010, the last year covered by the Education Department’s most recent Biennial Report on Title III, Title III directors in the 50 states and the District of Columbia projected that they would need 47,185 additional English as a second language or bilingual education certified teachers over the following five years to fill Title III teacher positions.³ Because the frame of reference is limited to Title III program teaching positions, the estimates are considered conservative.

The 2013 report “The Changing Teacher Preparation Profession” by the American Association of Colleges of Teacher Education included a finding that “teacher production shortages persist in key areas.”⁴ The report noted that “the current high-need fields in schools that serve low-income students include English language acquisition, mathematics, science, and special education.” Member -supplied data showed that:

In 2009-2010, ACCTE [American Association of Colleges of Teacher Education] member institutions (617 institutions reporting) awarded 72,073 bachelor’s degrees and 15,129 non-degree certificates in education at the bachelor’s level for initial licensure. Of those:

- 5% of bachelor’s degrees and 9% of completers were awarded in mathematics and sciences.

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- 7% of bachelor's degrees and 2% of completers were awarded in special education.
 - Less than 1% of bachelor's degrees and 2% of completers were in bilingual education or teaching English to speakers of other languages (TESOL).

In 2009-2010, American Association of Colleges of Teacher Education member institutions (440 institutions reporting master's levels programs) awarded 45,444 education degrees and 18,267 non-degree certificates in education at the master's or post-baccalaureate initial licensure level. Of those:

- 6% of degrees and 10% of certificates were awarded in math and sciences.
- 15% of degrees and 14% of certificates were awarded in special education.
- 2% of degrees and 2% of certificates were awarded in bilingual education or teaching English to speakers of other languages.⁵

The total number of bachelor's and master's degrees conferred and non-degree certificates awarded in bilingual and English as a second language education in 2009-2010 was less than 2,300; not even 25% of the additional teachers reported in the Biennial Report as needed in Title III language development programs.

What about the general classroom teacher who instructs Emerging Bilingual students outside of their language development program? How well are they prepared to meet the special needs of these learners?

A 2009 study by the Government Accountability Office found that basic teacher preparation programs in the U.S. do not provide enough specialized coursework in English language acquisition for general education teachers. The Government Accountability Office found that no more than 20% of teacher-prep programs require at least one course that focuses entirely on how to teach Emerging Bilingual students. Emerging Bilingual students are more often "a partial focus of required courses" the study says.⁶ "Administrators of teacher-prep programs told the GAO [Government Accountability Office] that one of the main reasons they don't have stiffer requirements for teachers to be trained to work with LEPs [Emerging Bilingual students] 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 Emerging Bilingual students, only half of new teachers have done so.⁷ And according to a 2005 study of California classroom teachers, "43% of teachers whose classes consist of a majority of LEP [Emerging Bilingual] students received no more than one in-service training session in the past five years on how to instruct these students."⁸

The lack of preparedness to serve Emerging Bilingual children extends downward from Kindergarten -12th grade 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.⁹ 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 Emerging Bilingual 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.

Last year, the Center for American Progress published a report on the need to familiarize all teachers with instructional methods, techniques, and practices that address the specific needs of Emerging Bilingual students. In “Preparing All Teachers to Meet the Needs of English Language Learners,” the Center for American Progress reasoned:

*The recent increase in immigration accounts for rapid and substantial demographic changes in the United States’ school-aged population. An estimated 25 percent—one-in-four—children in America are from immigrant families and live in households where a language other than English is spoken. This has significant implications for schools and the current discourse about the role of teacher quality and effectiveness in improving educational outcomes. What is rarely discussed ... is what teacher quality means for different types of students. The fact that the nation’s teachers are and will increasingly encounter a diverse range of learners requires that every teacher has sufficient breadth and depth of knowledge and range of skills to be able to meet the unique needs of all students, including those who struggle with English. While it is true that there are educational specialists for example, English as a second language and bilingual teachers, who have expertise in supporting ELLs [Emerging Bilingual students], many teachers do not. Yet the reality is that most, if not all teachers have or can expect to have ELL [Emerging Bilingual] students in their classroom and therefore must be prepared to best support these children. In many cases, a general education teacher who knows the content and pedagogy to teach to the grade level standards will also need specific knowledge and skills to help ELLs [Emerging Bilingual students] access the curricula.*¹⁰

The Center for American Progress report distilled research findings on effective Emerging Bilingual education and described in detail instructional methods, techniques, and practices which teachers should employ to optimize instruction for Emerging Bilingual students.

The report also set out fundamental policy recommendations.

In order to improve teacher effectiveness with ELL [Emerging Bilingual] students we recommend that consistent and specific guidelines on the oral language, academic language, and cultural needs of ELLs [Emerging Bilingual students] be addressed in:

- *Reauthorization of the Elementary and Secondary Education Act or ESEA*
- *Revisions to National Council for Accreditation of Teacher Education or NCATE Standards*
- *State regulations*
- *Teacher-preparation programs*

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- *State certification exams*
 - *Teacher-observation rubrics in performance evaluations*
 - *Professional development linked to teacher evaluations*¹¹

Instead of increasing Title III funding for teacher training or using other Department of Education programs to boost the supply of qualified teachers for Emerging Bilingual students, Secretary Duncan has pushed an initiative to train 100,000 science, technology, engineering, mathematics teachers over the next decade. In advocating science, technology, engineering, & mathematics teacher preparation, the Department of Education has not even seen fit to address the need for these teachers to have skills to help Emerging Bilingual students access science, technology, engineering, and mathematics programs.

Equally problematic is increased funding of Teach for America (TFA), an organization that places new college graduates with degrees in fields other than education in public schools as teachers. The Teach for America program is controversial because it provides only 5 weeks of summer training before its members are put in charge of classrooms, classrooms disproportionately comprised of economically disadvantaged students including Emerging Bilingual students.

Although Teach for America has been widely criticized for drastically “dumbing down” teacher preparation, the Department of Education awarded Teach for America \$50 million under the Investing in Innovation program. While Secretary Duncan has praised Teach for America for having made “teaching cool again,”¹² neither he nor Education Department officials have addressed Teach for America’s teachers’ abysmal lack of preparation to provide effective instruction to Emerging Bilingual students.

¹ “English Language Learners,” A Policy Research Brief, NCTE, 2008, p.6. retrieved from <http://www.ncte.org/library/NCTEFiles/Resources/Positions/Chron0308PolicyBrief.pdf>

² See, e.g., <http://www2.ed.gov/about/offices/list/ope/pol/tsa.doc>.

³ “The Biennial Report to Congress on the Implementation of the Title III State Formula Grant Program School Years 2009-10,” U.S. Department of Education, Washington, D.C., June, 2013, p.30.

⁴ “The Changing Teacher Preparation Profession,” AACTE, 2013, Washington, D.C. AACTE is a national alliance of teacher preparation programs dedicated to the preparation and professional development of teachers, school leaders, and other school personnel. More than 800 AACTE member institutions represent public and private colleges and universities in every state, the District of Columbia, Puerto Rico, the Virgin Islands and Guam.

⁵ *Ibid.*, p. 14..

⁶ U.S. Government Accountability Office, Highlights Page (2009, July 20). *Multiple Federal Education Offices Support Teacher Preparation for Instructing Students with Disabilities and English Language Learners, but Systematic Departmentwide Coordination Could Enhance This Assistance*. Washington, D.C. <http://www.gao.gov/highlights/d09573high.pdf>

⁷ Gándara, P.; Maxwell-Jolly, J.; and Driscoll, A. (2005). *Listening To Teachers Of English Language Learners: A Survey of California Teachers’ Challenges, Experiences, and Professional Development Needs*. The Center for the Future of Teaching and Learning, Santa Cruz, CA. <http://www.cftl.org/documents/2005/listeningforweb.pdf>

⁸ *Ibid.*, p. 17.

⁹ Malone, T. “Fewer Latino Children Enrolled in Preschool, Study Finds,” *ChicagoTribune*, November 15, 2010 http://articles.chicagotribune.com/2010-11-15/news/ct-met-latino-preschool-access-20101115_1_latino-children-risk-of-academic-failure-african-american-children

¹⁰ Pages 1-2. <http://www.americanprogress.org/issues/education/report/2012/04/30/11372/preparing-all-teachers-to-meet-the-needs-of-english-language-learners/>

¹¹ Page 3.

¹² Simon, Stephanie, “Has Teach for America Betrayed Its Mission?”, *Reuters*, August 16, 2012 <http://www.reuters.com/article/2012/08/16/us-usa-education-teachforamerica-idUSBRE87F05O20120816>

X NO CHILD LEFT BEHIND WAIVERS

In September, 2011, Education Secretary Duncan invited states to apply for “flexibility waivers” from some of the statutory requirements set out in the No Child Left Behind Act. In his letter to Chief State School Officers, Secretary Duncan wrote:

This voluntary opportunity will provide educators and State and local leaders with flexibility regarding specific requirements of NCLB [No Child Left Behind] in exchange for rigorous and comprehensive State-developed plans designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction.

In response to the Secretary’s invitation, 47 states, the District of Columbia, Puerto Rico, and the Bureau of Indian Education submitted requests for No Child Left Behind Act ‘flexibility;’ 39 states and the District of Columbia had been granted waivers as of July, 2013.

While the waivers have afforded states and local education agencies relief from some of the more arbitrary “one-size-fits-all” mandates of the law, they have also jeopardized No Child Left Behind’s central principle that schools are obligated to provide all students with an effective education. The children and youth most jeopardized by the administrative waivers are those whose needs and rights have been historically ignored by public schools -- students with disabilities, Emerging Bilingual students, economically-disadvantaged students, and certain racial and ethnic minority-group students.

The primary benefit of No Child Left Behind for Emerging Bilingual students was its requirement that academic achievement data (English language arts and mathematics) be disaggregated and separately reported for

- economically disadvantaged students,
- students from major racial and ethnic groups,
- students with disabilities, and
- Emerging Bilingual students.

The No Child Left Behind Act required that this disaggregated data be reported to parents and the public at the school, district, and state levels. The disaggregated data by student groups was the keystone or linchpin of No Child Left Behind’s system of accountability and school improvement. The No Child Left Behind Act mandated 100% proficiency in English language arts and mathematics for all groups by 2014.

In lieu of its uniform accountability requirements, states receiving waivers are, subject to certain restrictions, permitted to develop their own system for accountability. How the state-devised accountability schemes deal with Emerging Bilingual students has been the subject of analysis and criticism by education and civil rights advocacy groups.

In February, 2013, the Education Trust published “A Step Forward Or A Step Back: State Accountability in the Waiver Era”¹ which analyzed the elements of accountability in Department approved waivers. The analysis, highlights of which are presented below through excerpts from the organization’s press release,² was disconcerting.

1. While most states set ambitious goals for raising student achievement and closing gaps between groups — often expecting much more annual improvement than they got under NCLB [No Child Left Behind] — most didn’t make performance against those goals actually count in school ratings.

Many states created accountability systems in which progress for all groups of students may be reported, but it isn’t a core part of a school’s rating. For example, New Mexico’s accountability plan would allow a school to receive an “A” rating, even if it consistently misses annual goals for its Native-American students or its Emerging Bilingual students. By allowing this disconnect in many state agreements, the Department has rendered gap-closing goals for student subgroups — one of the hallmarks of No Child Left Behind — nearly meaningless for all but the lowest performing schools.

2. Some states created “super subgroups” to ensure that schools with small numbers of students in a particular group — such as English learners [Emerging Bilingual students] or American-Indian students — did not escape responsibility for the achievement of those students. But many of the approved plans undercut the advantages of this approach.

In theory, using super subgroups holds more schools accountable for the performance of small groups. However, these averages could end up hiding more than they reveal, because few states put protections in place to mitigate this problem. For example, a school could make required progress by advancing Emerging Bilingual students, but not students with disabilities.

The potential benefits are also negated when super subgroup performance doesn’t matter much. In Indiana, for example, super subgroups are comprised of the lowest performing students in each school rather than the traditional subgroups outlined in No Child Left Behind. However, the performance of the super subgroup only counts for “bonus points” in a school’s rating. And schools can earn an equal number of bonus points for growth among the rest of the student body. This means that it’s possible for a school to do well in the system even if its lowest performing students don’t improve and gaps between low- and high-performing students get bigger.

3. States have been arguing for years that schools should be evaluated on “multiple measures,” not just state test results and graduation rates. But when given the opportunity to broaden the components of their accountability systems, few did.

The guidance from the Department of Education in this area opened the door to several non-academic indicators. But most states didn’t include additional measures in their accountability proposals at all.

Those that did focused on ratcheting up college and career readiness in high schools. For example, Idaho's high schools are now accountable for student participation and success in rigorous coursework like Advanced Placement and International Baccalaureate, as well as their performance on college-placement tests. Unfortunately, however, most states that include these indicators typically count only overall performance, thereby ignoring what are often wide gaps between student groups.

4. Most state plans for improving their lowest performing schools are steps forward from No Child Left Behind. But while they may be better, that doesn't mean they are as good as they should be.

The plans for improving "Priority Schools" stand in stark contrast to those required under current law, which followed a formulaic path for all schools, regardless of whether they missed their goals by a little or by a lot. But there are some aspects to these plans that still need attention.

While Massachusetts took a bold step by declaring that a district's performance rating is based on the designation of its lowest performing school, too many other states leave district responsibility vaguely defined. Equally important, many state plans don't spell out a clear course of action for schools that, after several years of receiving additional resources and support, still do not improve. In Maryland and Georgia, for example, lack of improvement only prompts more planning.

Maybe the most disconcerting aspect of Education Department-approved waivers was how states' accountability plans ignored or circumvented the 2008 No Child Left Behind regulations requiring all states to use a uniform method for calculating graduation rates – the percentage of 9th grade students earning a regular diploma within four years .

High school completion is a vital element of any educational accountability system -- a basic measure of educational equity and success. Graduation rates for particular student groups, especially Emerging Bilingual students, have documented glaring inequalities. A 2013 study found that Emerging Bilingual students are 250% more likely than native-English-speaking students to drop out of school before graduation.³ Honest, uniform calculation of graduation rates is also necessary to ensure that schools do not "push-out" certain students to artificially inflate a school's test scores or graduation rate.

More than 30 national business, education, and civil rights organizations signed a September 21, 2012 letter to Secretary Duncan urging the Department to require all "waiver states" to employ the 2008 graduation calculation standard in their accountability systems.

Based on a review of the 35 state waivers approved at the time, *Education Week* reported in October, 2012:

A number of states that have received waivers from provisions of the No Child Left Behind Act are using graduation rates in different ways as part of their accountability systems. A sampling:

COLORADO

Allows schools to use a four-, five-, six-, or seven-year graduation rate—whichever is highest—in the state’s new performance framework. Graduation rates for all students is one of four college- and career-readiness indicators that, in total, make up 35 percent of a school’s grade.

LOUISIANA

Twenty-five percent of a school’s grade is based on the four-year graduation rate, and 25 percent is based on a “graduation index” that awards points for students who get advanced diplomas but also who earn GEDs. [General Equivalency Diploma]

MICHIGAN

Graduation rates will account for 16.7 percent of a school’s total score; 10 percent of the state’s top-to-bottom ranking of schools that determine certain interventions. Schools will be able to use the highest of a four-, five-, or six-year rate once enough years are available to make those calculations.

NEW YORK

Schools that are not already “priority” or “focus” schools will have to meet the 80 percent statewide graduation goal or make progress toward those goals, based on a four- or five-year graduation rate. If at least one student subgroup in a school does not meet those targets, the school will qualify for interventions as a “local assistance-plan school.”

SOUTH DAKOTA

A school’s four-year graduation rate makes up 12.5 percent of a school’s grade and a high school “completer” rate that includes students who earn GED certificates makes up 12.5 percent.⁴

Subsequently, the Department of Education posted on its website a document entitled “Approved Graduation Rate Goal and Targets as of November 2012” which shows for all 50 states individual state graduation rate goals and targets.⁵ How each of the “waivered” states is factoring graduation rates into its accountability system formula, however, is not shown.

While it is too soon to determine the full impact of No Child Left Behind waivers on the education provided to Emerging Bilingual students, it is clear that they jeopardize the transparency afforded by the No Child Left Behind Act as well as the unequivocal expectation that these students can and should perform at the same level as native-English-speaking students.

¹ Hall, Daria, “A Step Forward Or A Step Back: State Accountability in the Waiver Era,” Washington, D.C., February, 2013 can be accessed at

http://www.edtrust.org/sites/edtrust.org/files/A_Step_Forward_Or_A_Step_Back.pdf

² “New Ed Trust report shows several state accountability systems created through NCLB waivers weaken civil rights commitments of federal law,” Education Trust Press Release, Washington, D.C., February 7, 2013 can be accessed at <http://www.edtrust.org/dc/press-room/press-release/new-ed-trust-report-shows-several-state-accountability-systems-created-t>

³ Callahan, Rebecca M. “The English Learner Dropout Dilemma: Multiple Risks and Multiple Resources,” California Dropout Research Project, 2013 can be accessed at

<http://www.cdrp.ucsb.edu/download.php?fileearchrep=resort19.pdf>

⁴ McNeil, Michelle, “Graduation Rates Latest NCLB Waiver Flashpoint,” *Education Week*, Washington, DC, October 30, 2012 can be accessed at

<http://www.edweek.org/ew/articles/2012/10/31/10graduation.h32.html?qs=waivers+graduation+rates>

⁵ Can be accessed at <http://www2.ed.gov/policy/elsec/guid/secletter/enclosurechart3.doc>

XI Conclusion

The education of Emerging Bilingual students has received scant attention from Secretary Duncan and the Obama Administration. Indeed, no Administration programmatic initiative or priority has principally focused on this student population despite its unique needs, abilities and burgeoning growth. When the Administration has specifically addressed Emerging Bilingual students, it has usually been as an after-thought or belated add-on to other general education policies, programs and priorities.

The lack of attention to Emerging Bilingual students may, to a certain extent, reflect the Administration's commitment to the philosophy underlying the No Child Left Behind Act – a philosophy that improved education is best accomplished by market-like, data-driven, punitive accountability mechanisms and privatization. This approach to educational improvement and “reform” has focused more on the mechanics of testing and the intricacies of assessment than on the practice of teaching and principles of learning; more on outcomes than on opportunities to learn. Just as the daily measurement of a child's height does not cause the child to grow taller, incessant student testing does not promote learning.

Secretary Duncan has repeatedly held out the test scores and educational accomplishments of other nations, urging Americans to boost academic standards and expectations, “to raise the bar” for our students. The one educational standard he has not addressed is a standard for language education and development. On this standard, the United States ranks dead last among developed nations; we seem to be satisfied to have our students learn only one language during their elementary and secondary education.

Today's one-language educational standard is an irrational impediment to U.S. economic development, innovation, and growth. It delimits the scale of trade -- both in goods and ideas -- and reduces the nation's productive potential. The one-language standard minimizes the likelihood that U.S. students will be able to meet the challenges and to seize the opportunities ahead. English proficiency alone is too low a bar for students who must compete and collaborate in a complex, dynamic, culturally and linguistically diverse global environment.

Our current one-language educational standard weakens national security, especially in an era of asymmetric and unconventional conflict. Hearts and minds are more cheaply and surely won with words than weapons. The awesome firepower of language rarely produces collateral damage, incites retribution, or fosters the enlistment of new foes. Multilingualism improves the quality of national intelligence and expands its reach and supplements military might with diplomatic prowess. Whether our children learn other languages and understand other cultures will determine if they are able to collaborate, equally and excellently on a global scale and the extent to which the United States is viewed as a world leader.

Movement beyond the current one-language education standard is also important for the efficient functioning of our society in an era of dramatic demographic change. This change, a product of both immigration and structural demographic dynamics, is particularly evident in language.

Fifty-five million humans living in the United States – nearly 20 percent of our total population - speak a language other than English at home. Of these people, 86 percent were born in the United States, 37 million speak Spanish and 25 million are deemed Emerging Bilinguals. Government programs and societal interests including education, health, the administration of justice, public safety, and social welfare depend on civic participation and effective communication between people and their government. And for this large and growing segment of our population, communication must be bilingual if it is to be effective.

The one-language standard reinforces the educationally-destructive “deficit” view of Emerging Bilingual students and delimits their natural linguistic development. It also denies English monolingual students the opportunity to benefit from their Emerging Bilingual peers. Finally, the one-language education standard is contrary to the vision President Obama enunciated during the 2008 campaign that all Americans should be “bilingual or trilingual.” Considerations of educational equity and excellence should cause Secretary Duncan to finally focus on the needs and talents of Emerging Bilingual students and to advocate the development of multilingualism for all American students.

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