

MAKING UNEVEN STRIDES:
*State Standards for
Achieving English
Language Proficiency
Under the No Child
Left Behind Act*

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Executive Summary

Of all aspects of U.S. public education, perhaps nowhere has The No Child Left Behind Act of 2001 (NCLB) had a greater impact at the classroom level than in the teaching of English Language Learners (ELLs). One important trend among states seeking to comply with the law is the tendency to develop a single, statewide process of identifying, assessing and redesignating ELLs. This study examines those states with the largest ELL populations with regard to both their standards and assessments and their educational accomplishments to date. Findings include:

- Texas has resisted the above trend, and allows school districts to designate Limited English Proficient (LEP) students differently, so that a child can conceivably be labeled as such in one school district, but labeled English proficient in another.
- New York employs the widest variety of assessments for English learners of the states examined – some twenty different tests, including reading tests in Spanish and Chinese.
- Illinois, one of the few states in the U.S. that mandates bilingual education, allows school districts the lowest criteria for demonstrating acceptable progress for improving English fluency among all states examined. It switches to a new statewide assessment in Spring of 2006.
- Florida has made small, but positive progress with its LEP population since 2002-03, and, with its NLCB plan renegotiated, some more short-term progress can be expected.

This paper also analyzes various elements of NCLB's accountability requirements and offers specific policy recommendations to address problems raised, such as developing a more meaningful starting point for Adequate Yearly Progress, exempting LEP students from meeting the state's proficient level until they have been in the U.S. for five years, and assessing individual LEP student progress, not the progress of the group as a whole. It also demonstrates how NCLB has led to improvements in state monitoring of academic progress by LEP students, and development of statewide proficiency tests.

Details follow.

Introduction

The No Child Left Behind Act¹ (NCLB) is both cursed and revered. Some call it a dictatorial mandate (National Conference of State Legislatures, 2005), others call it unrealistic (Robert Linn in Chubb, et al., 2005; National Conference of State Legislatures, 2005) while still others call it “a historic stride toward improving American education” (John Chubb in Chubb, et al., 2005) and the catalyst for reducing the black-white achievement gap (Hanushek and Raymond, 2005). I am of the opinion that it may be all of the above.

Navigating the law’s parts and sub-parts can be a mind-numbing exercise, even for those experienced at working with education law. One has to read it many times to figure out what it says and that is only the beginning of its technical and conceptual problems.

This means that LEP students, low income students, students with disabilities, blacks, and Hispanics have an NCLB-assigned starting point that is substantially higher than their actual starting point.

The purpose of this paper is to compare states with large Limited English Proficient (LEP) populations with regard to their standards for limited English proficient children and what they have accomplished to date and to analyze the elements of No Child Left Behind that affect the achievement of LEP children. Both Title I and Title III of NCLB speak to the education of limited English proficient children, also known as English language learners (ELLs).² The most important, and perhaps the most controversial, part of NCLB is that all students, including the economically disadvantaged, those from major racial and ethnic groups, those with disabilities, and those with limited English proficiency, must achieve the state’s proficient level in “challenging” academic standards “not later than 12 years after the end of the 2001-2002 school year,” broadly interpreted as a specific target date of 2013-14.³

The law’s formula for academic starting points renders NCLB illogical and unrealistic. Furthermore, unlike the black-white achievement gap and the poor-affluent achievement gap which can at least theoretically be eliminated, the achievement gap between the category of children designated limited English proficient children and the category of children designated fluent English proficient (FEP) children can *never* be eliminated. That is because an LEP child is not just a child from an immigrant or non-English speaking

family. An LEP child is a child from an immigrant or non-English speaking family who scores *low* in English. If you define a group by their low test scores, that group *must* have low test scores or someone has made a mistake. Once an LEP child’s English test scores rise to the level defined by a state or local education authority (LEA) as the point at which they are English proficient (typically determined by a test tailored for limited English proficient children), they are no longer in the LEP group. Their scores now appear in the FEP group.⁴

In short, LEP children as a group will *always* have lower scores than fluent English proficient children as a group because that is how they are defined. If they met the state’s standards for “proficient” on the state achievement test that all children have to take, they would not be LEP – unless the state lowered its standard for “proficient” to the median proficiency level of children who score low in English

because they come from a family where the primary home language is other than English (PHLOTE), which is, of course, not what the framers of NCLB had in mind.

The most important sections of NCLB that affect children of limited English proficiency are Title I, “Improving the Academic Achievement of the Disadvantaged,” and Title III, “Language Instruction For Limited English Proficient And Immigrant Students.” Title I not only requires state education agencies (SEA) to develop plans to achieve 100 percent of students with limited English proficiency at the state’s “proficient” level by the 2013-14 school year, but the plan must include “separate, measurable objectives for continuous and substantial improvement” for students with limited English proficiency. For privacy reasons, students in a sub-group in a school can be excluded from disaggregation if they do not meet a minimum size, which states have been setting at between 30 and 50 students.

Starting Points

NCLB requires that the states establish the starting point for the annual measurable achievement objectives (AMAOs), using the 2001-02 school year, as the *higher* of either the percentage of students at the proficient level who are in the state’s lowest achieving sub-group of students (economically disadvantaged, major racial and ethnic

¹ The legislation is available at <http://www.ed.gov/policy/elsec/leg/esea02/index.html>.

² Because NCLB refers to LEP children, I will use that term in this paper. However, the more common term in the last few years is English Learner or English Language Learner.

³ This can be found in Section 1111, page 1447 under (F) timeline.

⁴ This conceptual problem also characterizes the group called students with disabilities (SWD). Since a large component of this group is mentally retarded children who are defined by their low IQ or children with such severe disabilities that they cannot master tests in any meaningful way, the group will always have low scores in English. If a child with a low IQ has a substantial improvement in their IQ or ability to successfully take tests, they are no longer in the group called SWD.

groups, students with disabilities, and students with limited English proficiency) or the school at the 20th percentile in the state, based on enrollment, among all schools ranked by the percentage of students at the proficient level.

I do not understand the logic of this formula and I have not found anyone who does. All of the states described in this paper use the latter starting point since it is always higher, and I have seen no criticisms of this formula in any of the state documents, perhaps because no one understands it well enough to criticize it. It is just accepted without question. Illinois' accountability plan⁵ illustrates the problem with this method using their 2002 assessment data. As shown below, the percent proficient of the school representing the cumulative 20th percentile in enrollment (when rank ordered on percent proficient) is substantially higher than that of any sub-group except Asians and whites. This means that LEP students, low income students, students with disabilities, blacks, and Hispanics have a starting point that is substantially higher than their actual starting point.

If an LEA has failed to meet their achievement objectives for two consecutive years, the state agency must require the LEA to develop an improvement plan. Schools with large numbers of the types of students whose mandated

annual yearly progress (AYP). If a group performing below proficient in either English language arts or mathematics⁶ decreases by at least 10 percent of that percentage from the preceding school year, the group made progress in graduation rates and at least one other indicator, and that entity had at least a 95 percent participation rate for the assessments in English language arts and mathematics, the school is considered to have made AYP (presumably only for that group, but the legislation does not specify).⁷

The 10 percent figure is arbitrary. Even if one accepts that it is possible to have the percentage of LEP students not meeting the state proficient level decline by 10 percentage points in a year (a highly unlikely occurrence based on current trends and current definitions of LEP), a 10 percentage point decline will not get the LEP group to 100 percent proficient in 2013-14 if it starts at the current average percentage proficient in language arts of 39 percent (61 percent not proficient) as shown in Table 2.

Title III, which is devoted solely to limited English proficient and immigrant students, is structured similarly to Title I, although it also has some new requirements. Title III requires that each state:

Figure 1. 20% Method Starting Point Compared to Actual Starting Points

Illinois 2002	20% method	All	American Indian	Asian	Black	Hispanic	White	IEP	Low Income	LEP	Lowest Group
Reading	40.86	59.3	59.2	68.5	36.8	37.1	72.2	27.4	38.4	24.1	24.1
Math	39.68	60.0	54.9	79.2	32.2	41.0	72.7	30.3	39.2	31.9	30.3

Source: Accountability Workbook, Illinois Board of Education, Revised May 2004, p. 7.

starting point was substantially higher than their actual starting point will thus be unfairly targeted as needing improvement when in fact they were simply given a starting point that was too far above their actual starting point.

States are responsible for insuring that LEAs annually assess the oral (which includes production and reception) language, reading, and writing English proficiency of all students with limited English proficiency (Section 1111 (b)(7)). In addition, NCLB requires that a sample of 4th and 8th graders in each state participate in the National Assessment of Educational Progress (NAEP) testing program in reading and math every other year to provide a validation of state results. There is no such national test required by NCLB to validate LEP achievement outcomes.

There is also a "safe harbor" provision for meeting

- Establish English language proficiency standards in speaking, listening, reading, and writing aligned with the state curriculum and standards;
- Conduct an annual assessment of English language proficiency using a test designed for children learning English (in other words different from the state proficiency tests in English and mathematics that all students take);
- Define two annual measurable achievement objectives for LEP student's development and attainment of English proficiency;
- Annual increases in the percentage of students *making progress* in learning English;

⁵ All of the state accountability plans can be found at <http://www.ed.gov/admins/lead/account/stateplans03/index.html>.

⁶ NCLB ups the ante with the addition of assessments in science for the 2007-08 school year.

⁷ This is found on p. 1448 at the bottom under (i).

Figure 2. **Comparison of Accountability Systems**

Title I Accountability

One-year snapshot of student performance

Components of evaluation

- State proficiency test scores (test all students take)
- Percentage of students assessed (95 percent)
- Attendance (K-8) / Graduation rates (9-12)

Schools labeled pass/fail

Title III Accountability

Cohort analysis of performance (may be longitudinal)

Components of evaluation

- Percentage of students *making progress* in learning English (separate English proficiency test for LEP students)
- Percentage of students *reclassified fluent English proficient* (separate English proficiency test for LEP students)
- Title I AYP for LEP subgroup (see first column)
- Two year monitoring of formerly LEP students

Schools labeled pass/fail

- Annual increases in the percentage of students *attaining English proficiency* (in other words being redesignated fluent English proficient);
- Hold LEAs accountable for meeting the above AMAOs (Section 3122); and
- Monitor formerly LEP students for two years after being redesignated.

Thus, not only do states have to achieve Title I goals for LEP students, they must also achieve Title III goals. Figure 2, adapted from Bell (2005) illustrates the two accountability systems that affect LEP students.

If an entity achieves the first three Title III goals shown on the right, then it is deemed to have met its AMAOs under Title III, although these objectives include Title I objectives. In short, LEAs with LEP students that receive Title III funds have a double set of hurdles to leap over.

Changing Title III from a competitive, discretionary grant that had to be applied for to a formula grant based on LEP enrollment means that many more LEAs are now receiving federal funding for LEP programs. The U.S. Office of English Language Acquisition, Language Enhancement and Academic Achievement estimates that Title III is nationally now reaching about 80 percent of LEP students. In the states with large LEP populations, it appears to be close to 100 percent.⁸

Title III also requires LEAs to provide a description of their programs and activities for LEP students and to record the number and percentage of children in them. No Child Left Behind specifically states that Title III neither mandates

nor precludes the use of a particular curricular or pedagogical approach to educating LEP children. However, students can be tested in their native language on the state reading and language arts achievement tests for up to five years and perhaps longer,⁹ although they still must take an English language proficiency test each year and show progress on it and they must take the state math assessment in English.

A report issued by the U.S. Department of Education (DOE) in March, 2005 describes a wide range of special testing accommodations currently offered English learners in different states. These range from offering testing instructions, or even entire tests, translated into their native, non-English, language, allowing additional testing time, and use of native-language glossaries. But little research exists to indicate whether these accommodations are valid or useful.

Recent revisions include a new assessment option: LEP students who have been in the U.S. for less than 10 months may take no state reading or language arts achievement test at all, although they do have to take an English proficiency test. This “transitional” year counts, however, as one of the years in which a student may take the state reading/language arts proficiency test in their native tongue. In addition, LEP students who are excused from testing, or who are tested in their native language in reading and language arts, count towards the NCLB requirement that no less than 95 percent of each student subgroup must take the reading/language arts and mathematics assessment in order to make AYP.

In the past, only the Spanish speakers would have been tested in their native language as that population is typically the only one large enough to justify the effort of creating a test in the native language. However, since under NCLB a limited English proficient student might be able to avoid the

⁸ I compared Title III served LEP students to the total number of LEP students in several states with large LEP populations and they were almost identical.

⁹ The current rules appear to allow states to assess an LEP child in reading and language arts in the native language for three years, and on a case by case basis two additional years. This can be found in Title I, Part A, Section 1111 (b)(3)(C)(ix)(III). This is also noted a little more clearly on p. 35463 in the Federal Register, vol. 69, No. 121, June 24, 2004 which can be found at <http://www.ed.gov/legislation/FedRegister/proprule/2004-2/062404a.html>.

state proficiency test in reading and language arts for five years if the state has a test in their native language, I can imagine states putting more effort into developing native language tests for the many language groups that exist. But, simply testing them in their native language won't solve the problem. Younger students are unlikely to score high in their native language given how little instruction they will have had in it and many of the older students will have similar problems. Furthermore, although very recent immigrants may score higher in their native language than in English, they will not all reach a high level (the "proficient" level) in their native language. The notion that LEP students who are tested in their native language will be high scorers in that language is as naïve as the notion that all native English speakers will be high scorers in English.

What is a Limited English Proficient Child?

No Child Left Behind treats this issue as most educators do. It is perceived to be a simple decision necessitating a simple criterion. Title III states that in the first two years, the DOE will determine the number of LEP children and immigrant children using Census data or data submitted by the states. In subsequent years, the DOE will determine the number of LEP and immigrant children using "the more accurate of" the data from the American Community

Survey available from the Department of Commerce or the number of children being assessed for English proficiency in a state. Assuming that "being assessed for English proficiency" means "determined to be limited English proficient," this is a fairly typical requirement. If it truly means "being assessed for English proficiency" it is quite unreasonable since more children are assessed for English proficiency than are actually determined to be LEP.

The determination of the English proficiency of a child is done by the LEA in every state. It is typically a two or three step process. The first step is the home language survey (HLS). That survey is filled out by the parents of all entering students. It asks several questions about the home language which usually includes at a minimum 1) the language that the student first acquired or the language most often spoken by the student, and 2) the primary language used in the home. If a parent indicates a language other than English on any of the questions, the child is then sent to have their English proficiency tested by an oral (production and reception) test if the child is young and assumed to be pre-literate, or an oral and written test if the child is older and assumed to be literate, although most test publishers recommend that older children who do poorly on the oral test should not take the written test.

Table 1
State Standards for English Language Proficiency and AMAOs Required by NCLB, Title III

	Designating LEP/ELL			Standards for LEP/ELL			Title III AMAO				
	Year of Statewide Language Survey	Year of Statewide English Language Proficiency Test	Year Annual Assessment of English Proficiency Required	Year of Current Standards for LEP	Year Current LEP Standards Aligned with State Curriculum	Year of Annual Measurable Achievement Objectives	Average Target % LEP Students Making Progress in Learning English by Cohort, 2003-04	Average Actual % LEP Students Making Progress in Learning English by Cohort, 2003-04	Average Target % LEP students Attaining English Proficiency by Cohort, 2003-04	Average Actual % LEP students Attaining English Proficiency by Cohort, 2003-04	% LEAs Meeting SMO, 2003-04
Arizona	2004-05	2004-05	1999-00	2004-05	2004-05	2003-04	-	-	-	-	41
California	1981	Spring 2001	2000-01	July 1999	July 1999	2003-04	51	61	30	38	81
Florida	1990	Spring 2006	2003-04	1999	1999	2003-04	*	*	*	*	*
Illinois	1976	Spring 2006	1976	Feb. 2004	2003-04	2003-04	85	87	26	32	45
Massachusetts ^c	not done	2003-04 ^a	2003	June 2003	June 2003	2003-04	70	33	29	21	0
New York	1997	2002-03	2002-03	2004	2004	2003-04	50	71	5	9	*
Texas	not done	Spring 2000 ^b	1973	Sept. 1997	Sept. 1997	2003-04	48	54	2	33	*
Average 7 states						2003-04	61	61	18	26	42
Median 7 states						2003-04	51	61	26	32	43
Average All States							58	62	18	27	55
Median All States							60	60	13	23	66

Source: US Department of Education, Biennial Evaluation Report, 2005.

* State reported data not available.

^a The LAS R/W and MELA-O for 2003-04; the new state proficiency test, MEPA replaced LAS R/W in 2004-05 and MELA-O continues.

^b District choice of test from state approved list for initial designation; districts must use statewide assessment for AMAO, but could use own test for redesignation and annual assessment.

^c The published report shows no data reported, but the report that is on the MDE web site shows 0.

If the Department of Education determines who is limited English proficient from the American Community Survey, this would be the same thing as determining limited English proficiency solely by a three question home language survey administered to a random sample. Therefore, the American Community Survey cannot be a substitute for the school district home language survey and other evaluation strategies. On the other hand, the survey could be a useful complement to the federal government's current determination of who is limited English proficient from school district sources. That is, the two sources of information would give us a fuller picture since the LEAs always overestimate the number of LEP students, for reasons explained below.

NCLB allows states to have flexibility in deciding how to determine whether a child is LEP. Section 9101(25) states that the term "limited English proficient" means:

- an individual aged 3 through 21 enrolled or preparing to enroll in an elementary or secondary school who was not born in the United States or whose native language is a language other than English; or

Federally-funded English instruction programs under the Bilingual Education Act generally demonstrated far less progress toward English fluency gains than is required under NCLB.

- is a Native American or Alaska Native, or a native resident of the outlying areas who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
- is migratory and whose native language is a language other than English and who comes from an environment where a language other than English is dominant and whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the ability to meet the state's proficient level of achievement on state assessments, the ability to successfully achieve in classrooms where the language of instruction is English; or the opportunity to participate fully in society.

California and Texas, and probably other states, are interpreting this to mean they can include formerly LEP students in the LEP group until they score at the proficient

level on the state achievement test for several years, and on this they have the approval of the U.S. Secretary of Education (letter of Feb. 20, 2004). This will not, however, dramatically improve the test scores of LEP students since the group designated LEP will always be much larger than the redesignated students scoring at the proficient level for a few years on the state achievement test, and the latter's scores will not be dramatically higher than current LEP students.

Before NCLB, children who came from a language minority background as determined by the home language survey had their English proficiency assessed by any one of a dozen or so commercial English proficiency tests, such as the BINL, BSM I/II, Pre-IPT, IPT I/II, pre-LAS, LAS I/II, and the Woodcock-Muñoz Language Survey. These English proficiency tests are badly flawed because they cannot tell the difference between a child who does not know the answer and a child who does not know enough English to understand the question or convey the answer (Rossell and Baker, 1988, 1996; Rossell, 2000a, 2000b, 2002). In addition, they are normed on a mix of English speaking students and high level (i.e. high scoring) LEP students (it could not be otherwise since non-English speaking students will not know

enough English to be able to produce a normal or even reasonable curve)¹⁰ and a cut-score is chosen that assigns a child to a specific LEP level based on their score and FEP if they score above it.

Federally-funded English instruction programs under the Bilingual Education Act (Title VII of the Elementary and Secondary Education Act which was reauthorized as Title III of NCLB) generally demonstrated far less progress toward English fluency gains than was required under the 2001 law. It was also common for these programs to have significantly lower participation rates in assessments, fueling criticism that they were practicing selective inclusion of test scores to demonstrate desired results (Soifer, 2002).

There are two unfortunate outcomes of this reliance on tests. First, any cut-score that assigns a child to the proficient level of fluent English proficient that is above zero will identify some percentage of children as limited English proficient who are in fact fluent in English. I call these

¹⁰ According to the technical manuals, the norming population for the LAS R/W is 32 percent English speaking, the LPTS is not stated, the MAC II is 0 percent English speaking, the IPT R/W is 48.4 percent, the IPT O is 30 percent. The rest are high scoring LEP students.

“false positives” – that is, a child is designated as limited English proficient when in fact they are fluent in English, but do not know the answer to the question. In one experiment conducted in Chicago two decades ago, the LAS identified 78 percent of above average English monolingual kindergarten students as limited English proficient, and across all grades 45 percent were identified as limited English proficient (Pearlman and Rice, 1979). Luckily, the home language survey is used as an initial screening device or three-fourths of American kindergarten students would have been classified as LEP by these tests.

The inclusion of high scoring LEP students in the norming population in recent years in many of these tests including the LAS will have reduced the false positive rate, but I could not find any information on what the current rate is. In light of the low redesignation rates shown in Table 1, I suspect it is still pretty high. Thus, some unknown percentage of students who come from a home where a language other than English is spoken will be classified as LEP, when in fact they are proficient in English, but merely low scorers or young children who psychologically cannot handle an oral test.¹¹

Second, because each test publisher selects different cut-scores for limited English proficient, the tests do not agree with each other. A child could be identified as LEP by one test and FEP by another (Rossell and Baker, 1988; Rossell, 2000a, 2000b).

These tests are not only invalid to some unknown degree (that is they over-identify children as LEP), they are also unreliable (that is you cannot get the same answer in repeated measures). In several analyses done of language proficiency tests, a large percentage of scores for the same child and test were either no different after one year or lower. Since it is highly unlikely that an LEP child will know less English at the end of one year than at the beginning, one can only conclude that the tests are unreliable (Rossell and Baker, 1988).¹²

The process of redesignating a child as fluent English proficient has the same problems. It typically involves an English proficiency test and often an academic achievement test. The lack of agreement between English proficiency tests is even greater at the point of redesignation. This is because the problem of the tests being unable to tell the difference between a student who does not know the answer and a student who does not know enough English to understand the question is more likely at the point of redesignation when the language proficiency exams are more difficult.

The emphasis on state plans for annually monitoring English proficiency should lead to statewide uniform tests of English proficiency because the only sensible way for a state to monitor the English language progress of LEP students and the percentage being redesignated fluent in the hundreds of school districts in a state is to have a single, statewide test of English proficiency. A single, uniform statewide proficiency test does not, of course, solve the problem of the test classifying children as limited English proficient who are fluent in English or failing to redesignate children who are fluent in English, simply because they do not know the answer to the question. It does solve the problem, however, of a child being LEP in one district and FEP in another simply because they are using a different test or of one district having lower redesignation rates than another simply because it is using a test with a higher standard for redesignation – all problems that existed prior to the move toward a single statewide English Proficiency Test.

In short, having states develop one uniform statewide English proficiency exam is an improvement, but it does not solve the fundamental flaw in English proficiency tests – they frequently cannot distinguish the difference between a student who does not know the answer and a student who does not know English.

After the legislation was written and approved, the DOE recognized the fact that LEP children are defined by their low achievement and the proposed revised regulations allow a state to include “formerly LEP” students within the LEP category in making AYP determinations for up to two years after they have been redesignated fluent. This was based on the fact that “because LEP students exit the LEP category once they attain English language proficiency, school assessment scores may not reflect gains that the LEP student subgroup has made in academic achievement.”¹³ The original authors of the legislation remain mute on this subject. Nor have I seen any acknowledgment of this problem in the many discussions of NCLB written by academics (Hoxby, 2005, Chubb et al. 2005, Peterson and Hess, 2005, Howell, 2004, Casserly, 2004; Linn, Baker, Betebenner, 2001).

While the inclusion of reclassified LEP student scores “for a year or two” is a step in the right direction, it is inadequate. Assuming an LEP student was correctly identified to begin with (which may not be true), he or she will not reach their true level of proficiency absent the language barrier in two years. It may take anywhere from 5-10 years depending on the age at which a child arrives to reach this level of fluency. A non-English speaking child entering in kindergarten and taught completely in English might achieve full

¹¹ An incident that I have personal knowledge of because the mother is a friend of mine involves an upper middle class Hispanic family in Berkeley whose son was tested on the IPT in 1988 because the principal did not want to wait for the home language survey to come back (the district was being sued for not providing enough bilingual education) and the child had a Hispanic first and last name. The child was classified by the IPT as LEP. The mother called the district and informed them that her child spoke no language other than English and she would not allow his assignment to a bilingual education class. A year later at the end of kindergarten, the child took another test and was classified as gifted. So it is possible for a gifted kindergarten child to fail an English language proficiency test.

¹² At least some of this unreliability stems from the fact that the tests were not vertically aligned so when a student went from one level to the next of a test, designed for a higher grade span, their test scores might go down.

¹³ The Secretary's letter to the states can be found at <http://www.ed.gov/news/pressreleases/2004/02/02192004.html>. The revised rules can be found in the federal register at <http://www.ed.gov/legislation/FedRegister/proprule/2004-2/062404a.html>.

Table 2
State Standards for LEP Title I English Language Proficiency Required by NCLB, Title I

	Test in Native Lang. or Altern. to Meet AYP	Currently LEP				Change from 2002-03 in Average % Attaining Proficient Level			Formerly LEP (2 Year Period)		Rating of State Proficiency Standards ^a	
		Average % Profic. in Math, 2003-04	Average % Profic. in Lang. Arts, 2003-04	% Grades Meeting Math Profic. Goal, 2003-04	% Grades Meeting Lang. Arts Profic. Goal, 2003-04	Math	Lang. Arts	Average % Profic. in Math, 2003-04	Average % Profic. in Lang. Arts, 2003-04	Grade	Rank (out of 40)	
Arizona	No	23	24	25%	0%	-3	-2	44	52	B-	9	
California	No	27	18	86%	86%	1	0	56	50	B	7	
Florida	No	30	28	25%	0%	4	9	53	46	C	17	
Illinois ^b	Yes	44	28	25%	0%	1	-2	61	39	C	19	
Massachusetts ^c	Yes	17	19	d	d	0	-1	28	37	A	5	
New York	Yes	45	*	d	d	*	*	*	*	C	16	
Texas	Yes	50	45	56%	44%	-7	1	76	79	F	39	
% of Grades Meeting Targets 7 States				47%	27%							
Average 7 States		34	24			-1	1	53	51	C+	16	
Median 7 States		30	26			0	-1	54	48	C	16	
% All States Achieving Average Target				38	18							
Average All States		41	39			5	4	56	60	C		
Median All States		40	39			4	3	56	58	C		

Source: US Department of Education, Biennial Evaluation Report, 2005.

* State reported data not available.

^a Based on difference between % scoring proficient on NAEP and % proficient on state exam. Source: Peterson and Hess, 2005.

^b LEP students take an alternative form (IMAGE) of the Illinois state proficiency test designed for LEP students and may take tests in native language.

^c Massachusetts 10th grade LEP students may take MCAS in Spanish.

^d Did not report goal.

^e Weighted average (weighted by N) of grades reported (see Appendix 2).

proficiency (that is, the point at which they would be absent the language barrier) in about five years, but an older child will take longer. Those who enter in high school could easily take a decade. Moreover, those who live in communities where their native language is the language of daily discourse will also take longer than those who live in more heterogeneous communities.

An unrealistic element of NCLB with regard to limited English proficient children is that although LEP students may be excused from taking math tests for their first year in the United States, it is assumed that after one year there will be no language barrier. This is simply not true. Since most K-12 math is language-based, it is not possible for a child who is LEP to understand a language-based lesson in math in any grade at the same level as a child who is fluent in English. Although this does not mean they should be taught in their native tongue or tested in their native tongue as some would argue, it does mean that limited English proficient children will be behind fluent English proficient children in math, at least until they are reclassified, and perhaps longer.

In short, an important flaw in NCLB is that students in the group labeled limited English proficient children cannot fully achieve the state's proficiency level, because if they become proficient they exit the category. It makes sense that such students remain in the group when their achievement increases, so a state can get credit for that improvement. Proposed regulations that would allow for this are a step in the right direction. But given the low rates at which LEP students are currently reclassified, the statistical impact will be limited.

COMPARING STATES

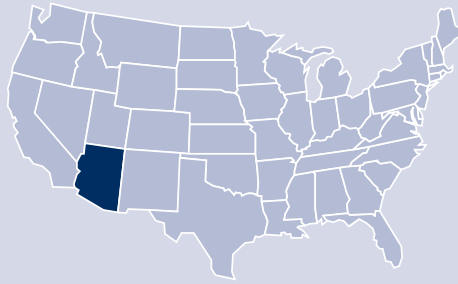
Although NCLB demands a level of accountability from states that is unprecedented, there is still enough flexibility so as to produce considerable variation from state to state in terms of academic standards. Most importantly, state percentages of students who are proficient cannot be accurately compared since each state is allowed to set its own standards for proficiency. Moreover, showing that a state standard for proficiency is above or below the NAEP standard is only a means of critiquing state achievement percentages (see Peterson and Hess, 2005; Chubb et al, 2005). It is not yet a means of equating the percentages. Thus, the fact that one state has a higher percentage proficient than another may mean only that the former state has a lower standard.

Since LEP students must achieve the state standard for proficiency, this flexibility affects them also. There are also areas of flexibility that affect only LEP students. States are free to set their own Title III objectives and define how to achieve them, as well as to determine: the definition of what an LEP student is, the English proficiency test(s) used to designate a child as LEP and redesignate him or her as FEP, the rules as to whether LEP children will take the state assessment tests in English or their native language and for how long, whether an LEP child will be excused in their first year in the U.S. from all assessment tests except the English proficiency test for designating LEP students, and how long formerly LEP children will be counted in the LEP group.

To make the task of comparing states manageable, I have selected the six states (Arizona, California, Florida, Illinois, Texas and New York) with the largest LEP populations in the U.S. being served by Title III, as well as one additional state, Massachusetts, to study in-depth. Massachusetts is included because it has a large LEP student population and is one of the three states (along with Arizona and California) that had previously mandated bilingual education as the default assignment for LEP students, but in which voters passed legislation mandating a sheltered English immersion program as the default assignment. All the states and their LEP populations are shown in Appendix 1, but those discussed in detail in this paper are bolded.

Arizona

In 2000, the voters of Arizona passed Proposition 203, which mandated that the default assignment for limited English proficient children, known there as English Language Learners, be a sheltered English immersion program. Prior to that, LEP students (mostly Hispanic) were either in some form of bilingual education (K-6 transitional, 7-12 secondary, K-12 bilingual/bicultural) or if there were less than nine LEP students at a grade level, they might have an individual language plan tailored for a mainstream classroom. Parents could also refuse to have their student placed in a bilingual education program, in which case an individual language plan was also written for the regular classroom. After the passage of Proposition 203, bilingual education enrollment declined from 36 percent of LEP students to five percent in 2004-05.



Defining a Limited English Proficient Child. Prior to 2004-05, each school district or LEA used its own home language survey, some of them with as many as 16 questions. Now, the first step in this process is the School Enrollment Form (SEF) created by the LEA, followed by the new statewide HLS. Both forms must consist of three questions: 1) What is the primary language used in the home regardless of the language spoken by the student? 2) What is the language most often spoken by the student? 3) What is the language that the student first acquired? Originally, the state HLS did not have to be administered if the registration form did not indicate a primary home language other than English (PHLOTE). Currently, both forms must be completed at the time of enrollment.

The home language survey, like the SEF, is a screening device – it does not identify a student as LEP, since a parent could answer every question with a non-English language and still have a fluent English speaking child. However, in Arizona as in every other state, if a parent answers a non-English language to *any* of these questions, the child is then tested for their English proficiency by an English language proficiency test.

The state English language proficiency test has changed since NCLB. Prior to 2004-05, LEAs in Arizona, as in most of the U.S., used any one of the following state approved English language proficiency tests: 1) the IDEA Proficiency

Test (IPT), 2) the Language Assessment Scales (LAS), 3) the Woodcock Language Proficiency Battery-Revised (WLPBR), or 4) the Woodcock-Muñoz Language Survey (WMLS) to determine students' English proficiency. The test was oral if the child being tested was preliterate (K-1) and oral, reading, and writing if the child was in grades 2-12. This has been revised and all students K-12 will be administered an oral, reading, and writing test as required by NCLB. Because the results could not be compared across districts as explained above, the state adopted one statewide English proficiency test. As of the 2004-05 school year, the Arizona Department of Education has required all LEAs to use the Stanford English Language Proficiency (SELP) exam produced by Harcourt Educational Measurement.

Although this is an improvement, it also means that the scores from previous years are not comparable to the scores from the new test. The state hired Jerome D'Agostino, a researcher from the University of Arizona, to establish a correlation between the scores on the four tests previously used with the scores on the new test. He created a computer program to be used by LEAs that does this. One cannot help but admire the ingenuity and creativity that went into this effort. Nevertheless, given that the tests are unreliable – it is difficult to get the same score when a student takes the *same* test twice – I doubt this effort will be entirely successful.

The new test has five proficiency levels, but in establishing the correlations, D'Agostino collapsed the new test into three English proficiency levels for each grade: level 1 which is non-English speaking, level 2 which is limited English speaking, and level 3 which is fluent-English speaking. However, since the cut-score for designating a child as being at a proficiency level that is considered not fluent English proficient is above zero,¹⁴ the test will classify some unknown percentage of children who are fluent in English as LEP, although it may do so at lower rates than the old tests. The new test, like the old test, will not always be able to distinguish between a child who does not know the answer and a child who does not know enough English to answer the question. I say this because I know of no way to eliminate this problem from the tests and many people have tried (see Rossell and Baker, 1996b).

Establishing English Language Content Standards Aligned with State Standards. Arizona has a complete set of content standards on their website (<http://www.ade.az.gov/asd/lep>) which were developed in 2003-04 and adopted in January 2004. In addition, the standards for LEP children were aligned with the state standards for each grade in January of 2004, but ADE training

did not begin until Fall 2004.¹⁵ ELL standards (category I to V) are correlated with kindergarten to 12th grade standards and the ELL standards include sub-categories: beginning, early intermediate, intermediate, early advanced, and advanced. These correlate with different tasks that all children must know in a specific grade.

Although the standards seem reasonable and professional, there is no information on how they correlate with test scores or the state standard for “proficiency” in math and language arts which is what NCLB is all about. It is the hope of the staff that I spoke to at the Arizona Department of Education that both LEP and FEP students who acquire the skills that they have set out in their state standards document will meet or exceed the test score that all children must achieve to be considered proficient.

In my opinion this will not happen for reasons that have nothing to do with the energy or competence of the staff of the Arizona Department of Education. First, the Arizona standards for LEP students, like those of the other states, are always lower than that of a non-LEP child, even at the highest level.

Arizona has shown a decline in the average percentage of LEP students achieving proficiency in math or language arts since 2002, but only one of the seven states (Florida) has shown any real progress in either math or language arts

Second, since an LEP child is defined by his or her low scores in English, the group as a whole can never have the same scores as the FEP group no matter how well aligned the LEP standards are with the state standards. In short, the professional, sensible Arizona state standards are not going to save them from failure in 2013-14 unless they lower the state standard for proficiency to that of the average LEP child, which I don't think is what the drafters of NCLB had in mind nor what they themselves would find desirable.

Annual Measurable Achievement Objectives. Arizona has set its Title III AMAOs as 10 percent of LEP students *making progress* towards English language proficiency; a 10 percent increase in the number of students reclassified as English proficient; and achievement of AYP under Title I with the baseline year being 2003-04.

Making progress is defined as moving from a lower to a higher level on the three level SELP. If 10 percent of the students who took the same test in both 2003 and 2004 went from one level to the next, the district met that AMAO.

Although this is an improvement on the usual standards which look at groups rather than individual students, it is nevertheless arbitrary and, like much of the standards forced by NCLB, not based on experience.

The same is true of the objective that 10 percent of LEP students be redesignated each year. California has been keeping annual redesignation rates for decades and the average annual increase in the redesignation rate for cohorts of students in any year since the single statewide proficiency test was implemented was 4 percent, with some years having negative increases. Although Arizona has not been tracking redesignation rates, I have been able to obtain the data and I find no increase at all in redesignation rates. Although these statistics are based on cohorts, not individual students, it does give us an idea of how ambitious, and probably unattainable, a standard Arizona has set for itself.

The annual measurable objectives were calculated as six percentage-point increments from the 2002 starting point, which averages 33 percent proficient in reading and 17 percent proficient in math on the Arizona Instrument to Measure Standards (AIMS). What is striking is how far

Arizona has to go to achieve 100 percent proficient in reading and mathematics in 2014. Although NCLB is praised because it ignores no group and holds all students to the same high standard, this standard is easier to achieve, the greater the percentage of white fluent English proficient students in a state. White, fluent English-proficient students typically have percentages at the proficient level that are around 70-80 percent, twice that of other groups. Since only about 20-25 percent of the variation in academic achievement is due to what goes on in school,¹⁶ there is a certain unfairness to NCLB because it stigmatizes states and LEAs with low starting points that they are mostly not responsible for and credits states and LEAs with high starting points that they are similarly mostly not responsible for.

Table 1 summarizes the above information on when the state HLS was implemented, when the state English language proficiency test was implemented, the year the state began to require an annual assessment of English proficiency, the year new English language content standards for LEP students were developed, the year the new standards were

¹⁴ English proficiency tests have proficiency levels that are derived from cut-scores.

¹⁵ Available at <http://www.ade.az.gov/asd/lep/> under the heading Standards.

aligned with the state curriculum, and the year annual measurable achievement objectives were developed.

The right side of Table 1 shows the achievement of Title III AMAOs for a cohort of LEP students. Each state was allowed to develop its own definition of a cohort. The original Biennial Report table (2.2a and 2.2b) is categorized by grade spans, but states could use other criteria such as level of English language proficiency or scores on the state achievement tests. As noted above, Arizona's definition was an LEP student with two years of English language proficiency test scores. According to the Biennial Report, Arizona did not report their Title III AMAO data for this cohort of LEP students. Arizona does, however, have a document on its web site that reports the number of LEAs that achieved each AMAO. As of 2004, only 57 percent of LEAs achieved 10 percent of their ELL students progressing from one English proficiency (SELP) level to another, although 88 percent achieved a 10 percent increase in the percentage reclassified, and 83 percent had their ELL subgroup meet AYP in math and reading. Since an LEA in Arizona must meet all three criteria, only 41 percent of LEAs met their Title III AMAOs.

In terms of their Title I achievement objectives shown in Table 2, on average,¹⁷ only 23 percent of LEP students were proficient in math and 24 percent proficient in language arts. The grade by grade data is shown in Appendix 2. Only 25 percent of the four grades reported by Arizona (3, 5, 8, and 10) attained their math proficiency objectives (not shown). The state was well off the mark in language arts, with no grades meeting their objectives – probably because the NCLB procedure for establishing the starting point for AMAOs is well above the actual starting point for LEP students.

Arizona did achieve its target in 10th grade math and almost achieved its target in 3rd grade math. As with the other states, however, the percentage proficient is higher in grades 3-5 (31 percent in math and 32 percent in language arts) than in later grades. It is certainly easier to bring a younger child, who is more likely to have been educated in that state from the beginning of their school career, to the state's proficient level than it is an older child whose earlier education is more likely to be elsewhere, including outside the United States.

Arizona has shown a decline in the average percentage of LEP students achieving proficiency in math or language arts since 2002, but only one of the seven states (Florida) has shown any real progress in either math or language arts. Formerly LEP students, those reclassified within the previous two years, do better than current LEP students, but only 44 and 52 percent of formerly LEP students achieved proficiency in 2003-04. Moreover, this represents a decline from the previous year.

In the last two columns of Table 2, we see that Peterson and Hess (2005) give Arizona a B- on the extent to which their standard for proficiency meets the NAEP standard for proficiency. This rating is based on all students, not just on LEP students. Since the average grade for the 40 states that had both a 4th and 8th grade NAEP score and a 4th and 8th grade state achievement test score is a C+ and the median grade is a C, that puts Arizona in ninth place.

¹⁶ Armor, David J. *Forced Justice: School Desegregation and the Law*. Oxford University Press, 1995; Coleman, James S. et al. 1966. *Inequality of Educational Opportunity*. Washington, D.C.: U.S. Government Printing Office; Goldhaber, Dan D., Dominic J. Brewer, and Deborah J. Anderson. 1999. "A Three-Way Error Components Analysis of Educational Productivity," *Education Economics*, 7 (13): 199-208; Jaynes, G.D. and R.M. Williams, (eds.) 1989. *Common Destiny*. Washington, D.C.: National Academy Press, 1989; Robinson, Glen E. and David P. Brandon. 1994. *NAEP Test Scores: Should they be Used to Compare and Rank State Educational Quality?* Arlington, VA: Educational Research Service.

¹⁷ This is computed as a weighted average (% weighted by N for that grade) of all grades reported.

California

California was the first of the three states where voters approved referendums making a sheltered English immersion classroom the default assignment for a limited English proficient child.¹⁸ Proposition 227 passed in June 1998, giving California school districts less than three months to implement sheltered English immersion for the upcoming school year. Bilingual education was not completely eliminated as teachers recruited parents and students to apply for waivers to form bilingual education classrooms (although the law specifies that parents make the request; see Rossell, 2002). In addition, two school districts, San Francisco and San Jose Unified, did not implement the law because they claimed it conflicted with their desegregation court orders. Nevertheless, the percentage enrolled in bilingual education in the state declined from 29 percent in 1997-98 to eight percent in 2003-04. At the elementary level, bilingual education declined from 39 percent in 1997-98 to about 11 percent in 2003-04 (see Rossell, 2002).

Defining a Limited English Proficient Child. The first step in defining a child as limited English proficient is the home language survey. As shown in Table 1, California adopted a single HLS in 1981 as required by state law (AB 1329), although it was a minimum set of questions that districts were free to add to.

In addition, California may have been the first state in the nation in 2001 to develop a single statewide English proficiency test, the California English Language Development Test (CELDT), to determine if a language minority child is LEP and to require, as of May 2001, all school districts to use it. The test, published by CTB/McGraw Hill, was originally an adaptation of the LAS test, allegedly for the new California ELD standards.¹⁹ Since then the test has been significantly changed in an attempt to better align it with the California ELD standards. I personally do not think that this is possible given the nature of such tests, but I admire the effort the California Department of Education (CDE) has put into this.

Currently, the CELDT tests LEP students' language proficiency in speaking, listening, comprehension, reading and writing, although kindergarten and 1st grade students are not required to take the latter two. Title III, however, requires the assessment of reading and writing in kinder-

garten and 1st grade as part of the annual English language proficiency assessment of LEP students. Although California requested a federal waiver from this requirement, it was denied in May 2005 so when the state legislature authorizes funding, reading and writing will be added for kindergarten and 1st grade. On the one hand, this seems a waste of the state's money since very few students will have a meaningful score on this test. On the other hand, it is a chance to establish a baseline to demonstrate how much progress individual students make who begin school in kindergarten and 1st grade.

Redesignation is an unnecessarily complicated process in California. Indeed, it is a wonder any LEP students get redesignated. First, a student must achieve a specific minimum score on the California Standards Test (CST) in English language arts which is administered in the Spring. The CDE requires that this score be somewhere between basic and the midpoint of basic, but each district establishes the exact point. Second, the student must meet the CELDT definition of proficiency, which is a minimum overall score of early advanced, and minimum scores of intermediate in each sub-skill: listening, speaking, reading, and writing.

Since the CELDT is only given in the Fall, a student might not be redesignated until the following year even if the child achieves the minimum score on the CST in the Spring. Districts are, however, encouraged to identify LEP students meeting the CST standard and to redesignate them even without the CELDT score, according to the Feb. 2005 Reclassification Guidelines. The third and fourth steps involve teacher evaluation of student academic performance and parent opinion and consultation. This double set of test hurdles strikes me as wasteful and unnecessary since the CST suffers from the same biases as the CELDT – it cannot tell the difference between a child who does not know English and a child who does not know the answer and I am not sure that teachers and/or parents have the confidence to overrule the tests. The more tests and hurdles, the more chance a child will not be redesignated.

Establishing English Language Content Standards Aligned with State Standards. In 1997-98, the year before Proposition 227 passed, the state had already imposed the requirement that all school districts use the same norm referenced test – at that time the SAT9 – to assess their students annually. English language learners were not allowed to be excused from taking the state test.

California, like the other states analyzed in this paper, has developed state English language content standards for LEP students that are aligned with state content standards as

¹⁸ California uses the term English Learner rather than limited English proficient.

¹⁹ Information on the testing program and ELD standards can be found at <http://www.cde.ca.gov/statetests/eld/eld.html>.

a result of Assembly Bill 748 which passed in 1997. The English-Language Arts Content Standards for California Public Schools (1998)²⁰ and the Reading/Language Arts Framework for California Public Schools (1999) define what all students in California, including ELL students, are expected to know and to be able to do. The English-language development (ELD) standards²¹ are designed to supplement the English language arts content standards by detailing what LEP students specifically should know. Although there are fewer categories, California, like Arizona, has set the standards for each level of English proficiency – “Beginning ELD,” “Early Intermediate ELD,” “Intermediate ELD,” “Early Advanced ELD,” and “Advanced ELD,” within each grade.

There is a document that aligns the two standards developed by WestEd.²² As common sense would dictate, the ELD standards are lower in each grade than the standards for fluent English proficient students. There is no document describing the state standards that has any reference as to how these standards relate to NCLB AMOs, AYP, or state proficiency test scores. As with Arizona, there is only the hope that the standards, which seem reasonable and professional, will lead to all students scoring at the proficient level.

A school’s growth is measured annually by how well it is moving toward or past the 800 goal. The API gives credit for growth whereas AYP is based on meeting specific targets on the road to 100 percent “proficient.” Because the formula for achieving AYP is so complicated, the state has created matrices and flow charts that show the different ways in which a school or LEA can meet or fail to meet AYP.²³

California tests English learners during their first year of enrollment in U.S. schools, but like almost all of the seven states discussed in this paper, it excludes the test results of these students from AYP percent proficient determination (as permitted by the U.S. Secretary’s letter of February 19, 2004). In addition, California includes the STAR assessments and CAHSEE results of formerly LEP students who have been re-designated fluent English proficient for *three* years after they have achieved the proficient level on the CST in English/language arts. State officials argue that this is consistent with the federal definition of limited English proficient students in paragraph (25) of Section 9101 of Title IX of NCLB which defines limited English proficient students as those with “difficulties in speaking, reading, writing, or understanding the English language [that] may be sufficient to deny the individual –

Redesignation is an unnecessarily complicated process in California. Indeed, it is a wonder any LEP students get redesignated.

Annual Measurable Achievement Objectives. The starting point for Title I AYP is the same as that of all the other states in this report – the 20th percentile in enrollment starting from the bottom when schools are ranked in descending academic proficiency. California’s definition of Title I AYP is very complicated because schools and LEAs are required not only to achieve their Title I AMOs, but also their Academic Performance Index (API) objectives. The two are based on different criteria and different models.

The API, implemented in 1999, includes the STAR Program assessments – the California Standards Tests (CSTs); the California Achievement Test-Sixth Edition Survey (CAT/6 Survey) which replaced the SAT9; the California Alternate Performance Assessment (CAPA) and the California High School Exit Examination (CAHSEE). The API is a numeric index (or scale) that ranges from a low of 200 to a high of 1000 with a statewide API performance target of 800.

the ability to meet the State’s proficient level of achievement on State assessments described in section 1111(b)(3).” The CDE further argues that it requires three years of attaining the proficient level on the English/language arts CST to determine that a reliable pattern of success has been established.²⁴ Although they are still in the LEP sub-group for reporting purposes, redesignated LEP students do not remain in programs for LEP students nor take the CELDT annually.

The first Title III AMAO annual growth target is for students to gain one proficiency level on the five level CELDT until they reach the level where they are considered English language proficient on the CELDT (Early Advanced Overall with no subskill below Intermediate) and maintain it until they are redesignated. When the annual growth target was applied to CELDT data from 2001 and 2002, 56 percent of CELDT takers statewide met the growth target. The final goal is 64 percent of LEP students meeting their annual growth target. Since they are currently achieving 61 percent

²⁰ This can be found at <http://www.cde.ca.gov/re/pn/fd/documents/english-language-arts.pdf>.

²¹ This can be found at <http://www.cde.ca.gov/re/pn/fd/documents/englangdev-std.pdf>.

²² This can be found at <http://www.wested.org/cs/we/view/rs/719>.

²³ California Department of Education, 2004 Accountability Progress Report, Information Guide, August 2004, p. 29. The document can be found at <http://www.cde.ca.gov/ta/ac/ay/documents/aprinfoguide04.pdf>.

²⁴ See State of California, “Consolidated State Application, Accountability Workbook,” Amended Sept. 15, 2004, p. 37.

of LEP students making progress, this seems to be an achievable goal.

In May 2003, the state Board of Education (SBE) adopted the definition of English language proficiency for the purposes of AMAO 2 as Early Advanced Overall on the CELDT, with all skill areas at the intermediate level or above. In addition, they defined the cohort of LEP students who could reasonably be expected to achieve proficiency at a given point in time as those:

- with two years of CELDT scores who have been in U.S. schools for four or more years;
- at the intermediate level or above who did not reach English proficiency the prior year;
- below the intermediate level the prior year who met the English proficient level.

Students who reached the English proficient level one year are not also counted as reaching the English proficient level the next year if they have not been redesignated FEP. This was done to provide an incentive to LEAs to redesignate eligible students when they reach the English proficient level on the CELDT.

As was done with the first AMAO, the starting point for AMAO 2 in 2003-04 was set using a process similar to the Title I AYP method of establishing the starting point. This resulted in a target of 30 percent of students in the above cohort expected to reach the English proficient level in 2003-04. The end target for 2013-14 was set at the 75th percentile of the LEA distribution, which translates to 46 percent of the cohort reaching English proficiency in that year. The target annual increases are a little above .7 percentage points a year in the first three years and then two percent for the next seven years, in line with the percentage increases in the redesignation rates that California has achieved over the last several decades (Rossell, 2002). In short, these standards appear to be realistic and achievable, rather than ambitious and unachievable as NCLB seems to demand.

Table 1 shows that California surpassed its Title III targets in the percentage of LEP students making progress in learning English and the percentage of LEP students attaining English proficiency averaged across all grades. In order to meet the AMAO 1 target in 2003-04, an LEA in California must have at least 51 percent of the LEP students in the AMAO 1 cohort making annual progress on CELDT. In order to meet AMAO 2, 30 percent or more of the LEP

students in the cohort in a California LEA must have attained the English proficient level in 2003-04. As shown in Table 1, 81 percent of its LEAs met their English language proficiency AMAOs which in the case of California does not include Title I AYP.²⁵

An important reason that California achieved its AMAO 1 and 2 targets is that its annual increase in learning English and the definition of the cohort that will achieve English language proficiency is realistic. The annual increase is one point and the cohort is students with two years of CELDT scores who have been in U.S. schools for four or more years; and students at the Intermediate level or above who did not reach English proficiency the prior year; and students below the Intermediate level the prior year who met the English proficient level.

Table 2, which refers to academic testing on the CST, the state proficiency test, shows that only 27 percent of LEP students were proficient in math and only 18 percent were proficient in language arts in 2003-04, although California met its goals in six out of the seven grades (3-8, and 10) that it tested. Having just been denied a request to the federal government to exempt kindergarten and first grade LEP students from being tested in reading and writing on the CST, those grades/skill areas will be added soon.

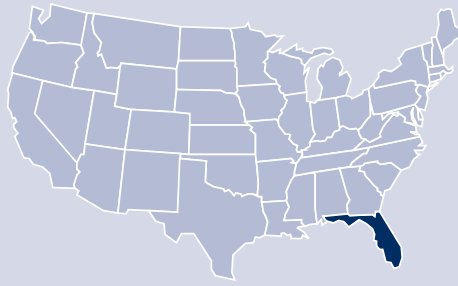
There has been no improvement since 2002 in the percentage of LEP students attaining proficiency in math or language arts in California. Formerly LEP students, those in the two year monitoring period, are more successful, of course. Fifty six percent of formerly LEP students achieve the state's proficient level in math and 50 percent achieve it in language arts, but there was little progress from the previous year's percentages.

California's overall standards for students are fairly high according to Peterson and Hess, rating them a B and a rank of 7th among the 40 states. Nevertheless, there are too many tests and too many hurdles for students in California and thus too many chances for students to fail.

²⁵ The form states "3. Effectiveness of Title III programs and activities in assisting LEP students to make progress in attaining English language proficiency and meeting State academic content and student academic achievement standards. 3.1 Provide a summary of the effectiveness of Title III programs and activities in assisting LEP students to meet State English language proficiency annual measurable achievement objectives. (Please fill in the figures (for each year) in the spaces provided.) The 2002-03 and 2003-04 categories to be filled in are: number of Title III subgrantees; number of LEP students served in Title III programs; number of Title III subgrantees that met Title III AMAOs; Number of Title III subgrantees that did not meet Title III AMAOs. Since Title I AYP is mentioned only in the first sentence, California and probably other states interpreted this as including only AMAO 1 and 2 of Title III

Florida

The state of Florida is in many ways a southern state. The only bilingual education programs that exist in the state are dual language programs, elsewhere known as two-way immersion, consisting of both English speakers and Spanish speakers. The state's accountability plan for LEP students is in even more of a flux than the other states analyzed in this paper due to recent renegotiations. Only 23 percent of Florida's schools met AYP using 2003-04 test data. The state has revised its targets so they are smaller and annual rather than in three year increments, and the minimum size subgroup changed from 30 students to 15 percent of the school's population. The state will, however, continue to report all data for subgroups with more than 30 students on school report cards.



Currently each district in Florida uses one of the state approved language proficiency tests (which include oral/aural skills and reading and writing) to determine LEP status. If a student is in the 4th grade or above, he or she is further assessed to determine his or her reading and writing proficiency in English. The reading and writing English proficiency tests are norm referenced and any student who scores at or below the 32nd percentile is deemed to be LEP. Some districts use the 51st percentile. Of course, 32 percent of the norming population will score at or below the 32nd percentile and 51 percent at or below the 51st percentile. The HLS as an initial screening device for LEP students reduces the incidence of false positives, but it does not eliminate them. Therefore, some unknown percentage of the students tested are being classified as LEP when in fact they are fluent English proficient, but simply low scorers.

The new English language proficiency test, the CELLA, will not solve this problem. It will substitute one arbitrary cut-off point for another. No cut-off score except zero will fail to classify as LEP, children who are in fact fluent in

“The only bilingual education programs that exist in the state are dual language programs, elsewhere known as two-way immersion, consisting of both English speakers and Spanish speakers.”

Defining a Limited English Proficient Child. Florida has a single statewide home language survey as result of a 1990 Consent Decree.²⁶ All school districts are required to ask: 1) Is a language other than English used in the home? 2) Did the student have a first language other than English? and 3) Does the student most frequently speak a language other English? Any student who answers yes to any of these questions is then administered an English proficiency test which consists of oral and aural skills and reading and writing as well as the judgment of the school's LEP assessment committee.

Florida will have a single, statewide English language proficiency test as of April 2006; prior to that it was district choice from a state approved list. The state is part of the five-state EPAS consortium (Pennsylvania, Michigan, Tennessee, and Maryland) and two organizations (ETS and Accountability Works) that are collaborating in developing a single English proficiency test, CELLA, the Comprehensive English Language Learner's Assessment. Florida used its state standards in developing the CELLA, which means it is only somewhat related to the curriculum of the other consortium states.

English. It will, however, improve the assessment environment in the state because at least all LEAs will be using the same standard.

Establishing English Language Content Standards Aligned with State Standards. Florida has a manual written in 1999 with a framework for instruction, labeled “Language Arts Through ESOL, a Companion to the Sunshine State Standards for Language Arts.” The standards and benchmarks chapter shows the skills students in each grade and LEP level should have and the strategies teachers can use to help their students learn these skills. These standards and benchmarks do not, however, seem to be specifically aligned with the state standards. And like all the other states discussed in this paper, they are not correlated with particular test scores on any English proficiency test or the proficient score on the Florida Comprehensive Assessment Test (FCAT). They are viewed as building blocks to academic success, but in a national climate where academic success is judged by test scores it is not clear how that will work. Nevertheless, they seem professional and reasonable, and should improve the education of LEP children if all teachers in the state take them seriously and use them as a guide.

²⁶ League of United Latin American Citizens (Lulac) et al. v. Florida Board of Education and Florida Department of Education, et al., U.S. District Court for the Southern District of Florida, Case 90-1913.

²⁷ The standards for each grade level can be found in a matrix at <http://www.firm.edu/doe/curric/prek12/frame2.htm> with subjects on the left and grades at the top. In order to see each standard you must click on the green circle in a cell.

State documents on the Florida Department of Education (FDE) website claim that the statewide assessment test, FCAT, is geared to the Sunshine State Standards and directly measures specific benchmarks that are part of the standards. Although the standards themselves seem professional and reasonable, the FCAT is partly a norm referenced test (the SAT9). As with the other states analyzed in this paper, there is no correlation between the skills students are supposed to know in each grade and a test score on the FCAT that designates a student as proficient.²⁷

Annual Measurable Achievement Objectives. Once LEP students have reached English language proficiency, they are categorized as language fluent (LF) and their academic success is monitored for two years. If an LEP student has achieved academic success for two years (as shown by grades, test scores, and teacher and LEP committee evaluation) after exiting an English for Speakers of Other Languages (ESOL) program, the student is then categorized as LF. Students who are categorized as LEP and LF are classified as LEP for accountability purposes.

LEP students who have been enrolled in an approved ESOL program for 12 months or less are allowed to take a locally-determined FCAT alternate assessment in reading and math and other subjects if a majority of the LEP committee, on an individual basis, exempts the student. According to the state, this represents a very small percentage of LEP students. The scores of the students taking alternate assessments are somehow equated with the established academic proficiency designations and included in the calculation of AYP. As of 2003-04, Florida had not finalized their AMAOs by subject or by student subgroup as required by NCLB, although this will soon change.

Through the A+ Plan, Florida has moved beyond accountability where school results are compared year to year to one that they claim is based on the academic growth of individual students and is capable of setting individual proficiency goals. Their goal is to ensure "that every child gains a year's worth of learning in a year's time."²⁸ This, of course, will not get them to the point of all children achieving at the state's proficient level, since to do that children who currently score lower than the proficient level will have to make *greater* than a year's worth of learning in a year's time.

Table 1 does not show any data submitted to the federal government for LEP students attaining Title III AMAOs and repeated attempts to obtain it were unsuccessful. Table 2 indicates that an average 30 percent of LEP students achieved the state's academic proficiency level in math in 2003-04 and 28 percent achieved the state's proficiency level in language arts (reading). Grades 3 and 4 did, however, achieve their targets in math. Although no grade achieved its target in language arts, grades 3 and 4 were close. The change since 2002-2003 is small, but positive. Since Florida has renegotiated its plan, it is possible that more progress can be made, at least initially.

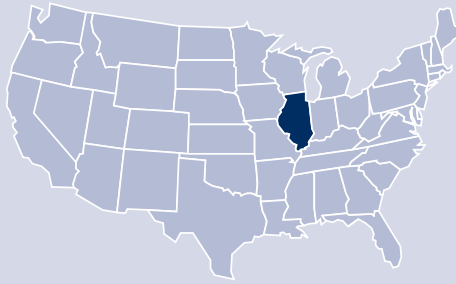
Formerly LEP students, of course, have much higher rates of achieving the state's proficiency standard with 53 percent proficient in math and 46 percent proficient in language arts. The published data show a small average improvement in these percentages for math, but no improvement in language arts from the previous year. The state submitted data shows improvement in both areas. Peterson and Hess give Florida a C and rank it 17th among the 40 states that give both a 4th or 8th grade NAEP test and have 4th and 8th grade state achievement scores.

²⁸ Florida Department of Education Letter to U.S. Secretary of Education, Margaret Spellings, April 1, 2005 which can be found at http://www.fldoe.org/NCLB/AYP_Amend_Letter_2005_04_01.pdf.

Illinois

Illinois is a member of the World-class Instructional Design and Assessment (WIDA) Consortium.

Established through a federal grant, the WIDA Consortium²⁹ consists of ten states, (Wisconsin – the lead state, Delaware, Arkansas, the District of Columbia, Maine, New Hampshire, Rhode Island, Vermont, Illinois and Alabama) who are pooling their resources to develop standards and equitable educational opportunities for English language learners. These ten states account for nearly 270,000 English language learners in kindergarten through 12th grade in approximate-



If the answer to either question is yes, the school will assess the child's English proficiency.³¹

Currently and in the past, all students identified as coming from a non-English speaking home by the HLS would take one of four state approved English proficiency tests, the LAS, the IPT, the Language Proficiency Test Series (LPTS), or the Maculaitis II (MAC II). If they scored at the 50th percentile or below, they were classified as LEP. If the test had been normed solely on an English speaking population as most used to be, at a minimum 50 percent of LEP students would score at the 50th percentile or below. Although the tests are now normed on a mix of high level limited English speaking students as well as English speaking students, there will still be some unknown percentage of false positives – students who are fluent in English, but who are low scorers. This is also a problem with redesignation – that is, attaining the English proficiency cut-score. For the

Illinois has the highest percentage making progress. It would be difficult to demonstrate that this is because they are doing a better job than the other states of educating LEP students.

ly 1,200 school districts. The consortium has developed English language proficiency standards and an English language proficiency test (ACCESS for ELLs) and is planning to develop an alternate academic assessment for English language learners (SUCCESS).

Illinois is also one of the few states in the U.S. that mandates bilingual education. According to Title 23, part 228, implemented in 1976, when a school has an enrollment of 20 or more of a single language group, it must offer a bilingual education program (transitional, developmental, 2-way, etc.) for that language group taught in the student's home language and in English. The law is unrealistic and one can only wonder how many schools are actually providing native tongue instruction when they have 20 of a single language in a school since the cost of actually complying would be astronomical.³⁰ Students receive ESL and other services, called a transitional program of instruction (TPI), if there are less than 20 of a single language group.

Defining a Limited English Proficient Child. The first step in the process is the home language survey. Illinois requires that districts include the following two questions: 1) Does anyone in your home speak a language other than English? If yes, what language? 2) Does your son/daughter speak a language other than English? If yes, what language?

tests normed on an English-speaking population, at a minimum, 50 percent of LEP students in Illinois will never be redesignated if the standard is the 50th percentile, unless teacher recommendations override it. For the tests normed on a mix of high level LEP students and English speaking students, there will still be some unknown, large percentage of false positives – students who are fluent in English, but who are low scorers.

As of Spring 2006, LEP students identified as coming from a non-English speaking family will all take the same statewide test, ACCESS for ELLs, which includes a test for initial identification and another for annual assessment.³² In grades K-12, the test not only includes listening and speaking skills, but also reading and writing.

The state claims that ACCESS for ELLs is a criterion referenced test directly aligned to the “WIDA English Language Proficiency Standards for English Language Learners in Kindergarten through Grade 12” and that the test targets academic language proficiency rather than general social English, the focus of most English language proficiency tests. Given that each state has a different state achievement test and different state curriculum, this means that only the skills and benchmarks that are common to each state will be aligned to the test, if that is even possible.

²⁹ Their web site is <http://www.wida.us>.

³⁰ The number 20 also appeared in the old Massachusetts bilingual education law, Chapter 71a, where it was 20 of a single language group in a *district*, even more unrealistic than the Illinois law. I find myself wondering why 20 seems to have an attraction for legislators (it resurfaced in Massachusetts in Chapter 218 which passed, but was succeeded by Question 2) regardless of how illogical the context is. It also appears in Title I of NCLB (the 20th percentile in enrollment) where it is equally inexplicable.

³¹ This can be found at http://www.isbe.net/bilingual/noteletters/hls_english.pdf.

³² All of the WIDA consortium will be using Access for ELLs except Arkansas. The schedule is Spring 2005: Alabama, Maine, and Vermont; and Spring 2006: Illinois, Delaware, District of Columbia, New Hampshire, Rhode Island, and Wisconsin.

In addition, if the test truly targets academic language proficiency, its false positive rate (students classified as LEP who are actually fluent in English, but simply low scorers) will probably go up.

As with the other states that have developed a single statewide English proficiency after NCLB, there is the job of aligning the old English proficiency test scores with the new ones. In Spring 2005, the WIDA Consortium conducted studies to determine comparability between ACCESS for ELLs and the four state approved tests, and is apparently prepared to align the old English language proficiency test scores with the ACCESS for ELL test scores. There is reason for skepticism, however, as to whether this will be entirely successful, because of the unreliability of the old tests. One of these sources of unreliability is that the old tests were not vertically aligned. That is, when a student moved from one grade span to the next and the test changed because of the new grade span, their score on the new test could easily stay the same or go down, which is not what one would expect from a reliable test.

On June 16, 2005, the Illinois Board of Education lowered the score one must obtain on the IMAGE to be “proficient.”

It is expected that the new test will be vertically aligned – that is that each test will be for no more than two grades and when the child moves from one grade span to the other the test will be aligned with the test for the lower grade span. That would produce fewer anomalies where students scores stay the same or go down after a year.

Establishing English Language Content Standards Aligned with State Standards. Although the Illinois Department of Education website states that the English language proficiency standards are aligned with the state standards for English language arts, they present no evidence for that publicly.

The English language proficiency standards for LEP students were developed by WIDA. They are task and skill oriented and seem to be sensible and professional and very similar to the standards developed in the other states. However, as with the other standards there is no information about how any task or skill will get an LEP student to the state’s proficient level.

As is the norm with these standards, there are five different levels of LEP students for each grade cluster.³³ According to a consultant I spoke to, the highest LEP level (5) is aligned with the state content standard. That is hard to see without the document that aligns the two.³⁴

Annual Measurable Achievement Objectives. The first objective, AMAO 1, attaining progress toward English language proficiency, is achieved if 85 percent of the students in a cohort make progress on one of the four state approved English language proficiency tests and as of Spring 2006, the ACCESS for ELLs. Progress is defined as a gain of at least one raw score point in any of the domains of listening, speaking, reading and writing. On the face of it, this seems to be the lowest criterion of the seven states examined in this paper, except that the English proficiency standards for the different states cannot be directly compared to each other since they all use different tests and different criteria. Nevertheless, the pass rates can give us an idea of the strength of the criterion. As shown in Table 1, Illinois has the highest percentage making progress. It would be diffi-

cult to demonstrate that this is because they are doing a better job than the other states of educating LEP students.

The criterion AMAO 2, attaining English language proficiency, is set at 25 percent for those who took the LAS test, 23 percent for those who took the IPT test, 22 percent for those who took the LPTS and 14 percent for those who took the Maculaitis II. Illinois exceeded this AMAO, but still had only 26 and 32 percent of the cohort making progress and only 45 percent of LEAs met their AMAO for 2003-04.

With regard to its Title I AMAOs, Illinois uses five different assessment tests: the Illinois Standards Achievement Test (ISAT) at grades 3, 5 and 8; the Prairie State Achievement Examination (PSAE) at grade 11; the Illinois Alternate Assessment (IAA) for special education students in grades 3, 5, 8 and 11; the Illinois Measure of Annual Growth in English (IMAGE) for LEP students in grades 3, 5, 8 and 11; and the grade 2 assessment (Terra Nova) in reading and mathematics. The grade 2 assessment is for Title I schools that have grade 2 as their highest grade. The IMAGE is an alternative form of the ISAT for LEP students

³³ These can be found at http://www.isbe.net/bilingual/htmls/elp_standards.htm.

³⁴ The state standards for all students can be found at <http://www.isbe.net/ils/Default.htm>.

who have been in a transitional bilingual program (TBE) or transitional program of instruction (TPI) in Illinois for no more than three years and on a case-by-case basis for two more years, for a total of five. It tests both reading and math.

In establishing the starting point for the Title I AYP, the Illinois State Board of Education used the same procedure as all the other states in this paper. They selected the percent proficient in the school at the 20th percentile in enrollment when ranked from lowest to highest in percent proficient because it is always higher than that of the other subgroups and NCLB requires that the choice be the higher starting point.

For example, in Illinois the 2002-03 starting point for the annual increase in the percentage proficient in reading and math was 40.9 percent and 39.7 percent, respectively. This was about 15 percentage points above the actual percentage proficient of LEP students for that year in language arts and 10 points above the actual percentage proficient in math. This is a problem because of the accountability requirement of NCLB. A school with mostly LEP and poor students would have an NCLB starting point well above its actual starting point, but even if it made large gains it could still be considered a failing school because it did not meet the state performance threshold for the next two years. A school with affluent students might meet this requirement with a decline in achievement because it started well above the single state-established starting point in the climb toward 100 percent proficient.

The Illinois plan seeks to increase student achievement goals in equal intervals until it reaches 100 percent proficient. What this means for LEP students is not clear, not only because their state-imposed starting point is 15 points above their actual starting point, but also because some unknown percentage of LEP students do not take the ISAT for their first three (and possibly five) years in a TBE or TPI program, they take the IMAGE. On June 16, 2005, the Illinois Board of Education lowered the score one must obtain on the IMAGE to be "proficient," which would apply to 2004-05 results, as well as future results. In addition, the state board voted to increase the minimum size of a subgroup from 40 to 50 before it can be held accountable.

As shown in Table 1, on average 87 percent of Illinois LEP students made a gain of one raw score in learning English, thus achieving that objective. In addition, 32 percent achieved English proficiency, thus meeting that objective. Finally, 45 percent of LEAs met their AMAOs, which is slightly above the average and the median for the seven states, but below the average and median for all states.

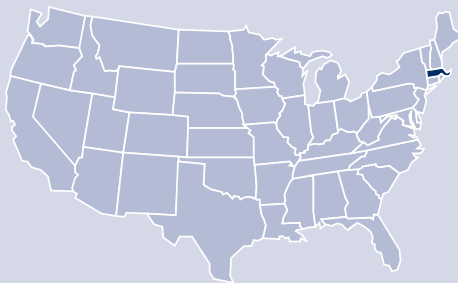
Table 2, which deals with Title I AYP, indicates that, on average, 44 percent of LEP students met the state's proficient standard in math, but only 28 percent in language arts, despite the fact that they can take an alternative form of the state's assessment test. Only 25 percent of the LEP students in the tested grades (3, 5, 8 and 11) met the state's math proficient level and not a single grade met the proficient standard in language arts.

Illinois shows no progress in this regard from 2002-2003, indeed it shows a decline. Of course, there is greater success with formerly LEP students who have been reclassified as fluent in English. Sixty-one percent of formerly LEP students were proficient in math and 39 percent were proficient in language arts during the two year monitoring period. However, this represents no improvement from the previous year.

Peterson and Hess give Illinois a C on the strength of its state proficiency standards and a rank of 19 out of 40. Given their low success rate for LEP students, however, I would not conclude that their Title I standards are low for LEP students, despite the fact that LEP students in some districts (a district level decision which the state permits) can take tests in the native language (probably only available for Spanish speakers) and an alternative test for their first three years in a TBE or TPI program. The new changes in Title I requirements may improve their results, but I predict not by much, and this has nothing to do with the talent and competence of the educators in Illinois.

Massachusetts

Massachusetts is the third of the three states in the U.S. to pass a law (November 2002) making sheltered English immersion the default assignment for an English language learner rather than a bilingual education classroom. Prior to the 2003-04 school year when the new law was implemented, if there were 20 or more children of a single language group, they were supposed to be in a full-time bilingual education program that included native tongue instruction and English. There was widespread cheating, probably due to shortages of certified teachers and the large financial demand of this requirement – 20 students in a single district amounts to under 2 students in a grade (since there are 13 grades in a K-12 district) close to private tutoring. The Massachusetts Department of Education (MDOE) sensibly ignored the cheating, but it also meant (as occurred in many other states in the U.S.) that there was considerable misuse of labels. Self-contained programs involving little or no native tongue instruction



education declined from 23 percent to 8 percent after the implementation of the new law.

Defining a Limited English Proficient Child. The process of identifying a child as LEP has not changed in Massachusetts since NCLB. Massachusetts does not have a single, statewide home language survey and currently has no plans to adopt one. As noted above, the HLS is only a screening device so this is not a serious handicap, but it does mean that a child might get referred for testing in one district, but not in another because the HLS had different questions.

Prior to 2003-04, Massachusetts allowed districts to use any nationally recognized English language assessment test. In 2003-04, they required all districts to use the LAS R/W to assess reading and writing and the MELA-O to assess listening and speaking while they began the process of developing their own proficiency test, the Massachusetts English Proficiency Assessment (MEPA). All LEP students K-12 are tested in speaking and listening on the MELA-O. Students in grades 3-12 are also tested in reading and writing on the MEPA. Overall performance is reported in four categories – Beginning, Early Intermediate, Intermediate and Transitioning – and scaled scores, ranging from 300 to 400.

Enrollment in true bilingual education declined from 23 percent to 8 percent after the implementation of the new law.

(such as the Cape Verdean, Chinese, Vietnamese, Russian, Khmer and Greek programs) were called bilingual education, as were programs which placed LEP students in mainstream classrooms with ESL pullout. The only true bilingual education programs were for Spanish speakers who learned to read and write in Spanish and received subject matter in Spanish and English as a second-language instruction, gradually transitioning to all English.

Prior to 2002, data on enrollment in bilingual education and other programs for LEP students was incomplete and inadequate for a variety of reasons. That has been rectified by the new law which requires detailed program enrollment data. I estimated the enrollment in true bilingual education prior to the new law from the state data on the number of LEP students by language and grade in each school. By my calculations, enrollment in true bilingual

All districts began using the MEPA in Fall 2004. After the 2004-05 school year, MEPA assessments must be administered annually in the Spring to all enrolled LEP students. Fall MEPA assessments (MEPA-R/W and MELA-O) will be conducted only for newly enrolled LEP students who did not participate in the previous Spring's testing.

Establishing English Language Content Standards Aligned with State Standards. Massachusetts established “English Language Proficiency Benchmarks and Outcomes for English Language Learners” in June 2003. The benchmarks for English language learners look a lot like those for the other states. There are grade clusters and within those grade clusters listening, speaking, reading and writing skills that an LEP child should know. At the end of the document is a table that summarizes skills in each grade cluster for each level of proficiency: beginning (omitted from the document), early intermediate, intermediate and transitioning.

The English Language Proficiency Benchmarks are explicitly linked to the state English language arts curriculum framework. As with Arizona, however, LEP students are sensibly not expected to accomplish all of the tasks that all students are expected to accomplish. And like the other states, although the benchmarks seem professional and reasonable, there is no evidence of how they relate to the proficient level on Massachusetts Comprehensive Assessment System (MCAS) or any other test.

Annual Measurable Achievement Objectives.

Massachusetts set its AMAOs at a time when the LAS R/W was being used. They established different standards for the three proficiency levels -- not yet approaching proficient, approaching proficient (transitioning), proficient. The annual standards established will change, however, now that the MEPA assessment system has been developed.

In achieving Title I AYP, student assessment results in English language arts (ELA) and mathematics on standard MCAS tests and MCAS-Alt Assessments are used to calculate a composite performance index for each school and district for all students and for student subgroups. The composite performance index (CPI) is as complicated as California's, although there are fewer tests.³⁵

MCAS is supposed to be based on the state's learning standards as set out in the State Curriculum Frameworks.³⁶ Like all the other states in this paper, Massachusetts calculated the starting points for ELA and math as the percent proficient at the cumulative 20th percentile in enrollment when schools are rank ordered from lowest to highest in percent proficient. The starting point for ELA was 39.7 percent proficient and advanced, which equals a composite performance index of 70.7. For mathematics, the starting point was 19.5 percent proficient and advanced, which is a composite performance index of 53. The targets progress in equal increments from the starting points for ELA (CPI of 70.7) and mathematics (CPI of 53.0) to 100 in 2014, that is all students performing at proficient or advanced levels in these subjects. Once again, this makes the starting point for LEP students much higher than their actual starting point.

First year LEP students must take the MCAS mathematics tests, but are not required to take the MCAS ELA (although they have the option of doing so). MCAS mathematics and ELA test results (if any) for first-year LEP students are not included when calculating a school, district or state CPI for students in the aggregate or any student subgroup.

Massachusetts is one of the 11 states that allow native language tests to fulfill some AYP requirements. In Massachusetts, Spanish-speaking LEP students in grade 10 who have been enrolled in schools in the continental United States for fewer than three years may take the Spanish version of the Grade 10 Mathematics Test and Mathematics Retest if they can read and write in Spanish at or near grade-level. However, students eligible to take the Spanish MCAS Grade 10 Mathematics Test must still pass the Grade 10 English Language Arts Test in English. Student performance for first year students is not factored into school or district performance results or included with the Performance or Improvement components of school and district AYP reports, but does count for the participation requirements if the LEP student took MEPA for their grade span.

Table 1 shows that only 33 percent of LEP students met their first AMAO of making progress in learning English compared to a target of 70 percent. They were closer to the mark with the second AMAO target with 21 percent of LEP students attaining the standard for English proficiency compared to a target of 29 percent. According to the Biennial Report, Massachusetts did not report the percentage of LEAs meeting Title III AMAOs, although it claims it did. The data can be found on the Massachusetts DOE website - it shows 0 percent of LEAs meeting their AMAOs. Again, these targets will be changed with the new assessment system.

Table 2 shows the achievement of Title I goals. The average percent proficient in math is 17 percent and the average percent proficient in language arts is 19 percent. Massachusetts did not meet any of its goals because they had not been set at that time. There was no improvement from 2002-03. Oddly, formerly LEP students who have been reclassified as fluent performed only slightly better than current LEP students, with 28 percent meeting the state's proficient level in math and 37 percent meeting the state's proficient level in language arts. This is one of the few states, however, where former LEP students improved from the previous year. Finally, the state's proficient level is the highest of the seven states analyzed in this paper, rating an A from Peterson and Hess and ranking 5th among the 40 states with both 4th and 8th grade NAEP scores and 4th and 8th grade state achievement test scores.

³⁵ A school's or district's Composite Performance Index in each subject for each student group is calculated as follows: 1) the number of students who took standard MCAS tests who performed at each of the five proficiency levels is multiplied by the number of proficiency index points (0, 25, 50, 75, or 100) associated with each level; 2) the number of students who participated in the MCAS-Alt for reasons other than significant cognitive impairments who demonstrated performance equivalent to each of the five proficiency levels is multiplied by the proficiency index points associated with each level; 3) the number of students with significant cognitive impairments who demonstrated performance at each of the five MCAS-Alt levels is multiplied by the MCAS-Alt index points associated with each level. The point totals from steps one, two and three above are added together. The sum is divided by the total number of students assessed (standard MCAS tests and the MCAS-Alt). The result is a number between 0 and 100 which constitutes the school's or district's Composite Performance Index ("CPI") for that subject, group and time period.

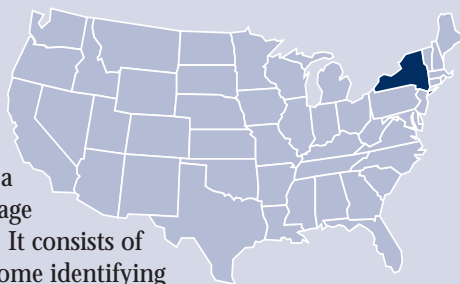
³⁶ It is, however, correlated about .83 with the CTBS, a norm referenced test, which is similar to the correlation between other state proficiency tests and norm referenced tests. Moreover, there is at least one critic who claims that MCAS was constructed in a manner similar to the process by which a norm referenced test is constructed.

New York

Defining a Limited English Proficient Child.

New York has had a single home language survey since 1997. It consists of 7 questions, plus some identifying questions such as the number of years the child has been enrolled in schools outside the U.S. It is also unique in asking the parent to assess whether the child understands, speaks, reads and writes English very well, only a little or not at all. Although parents tend to overestimate their child's command of English, I believe parental input is important. It might be a deciding factor in some questionable cases and the more qualitative information the school has the better it is able to interpret test scores.

Although the LAB, developed and used by New York City, was also widely used throughout the state, districts had a choice as to which of the many state-approved English language proficiency tests they could use. In 2002-03, new procedures and instruments were introduced statewide for uniform initial identification, continued eligibility, and measurement of annual growth in English proficiency for LEP students. The first of these new instruments is the revised



for a student to meet the criteria for exiting LEP status he or she is required to demonstrate proficiency in *each* of the four sub-tests.

With the first administration of the NYSESLAT in the 2002-2003 school year, only three percent of students scored high enough to be redesignated, a large decline from the previous year. In addition, some students were able to pass the Regents Comprehensive examination in English or achieve Level 3 on the 4th or 8th grade ELA examination, but were unable to score at the proficient level on all parts of the NYSESLAT. As the state points out in one of its documents, this problem also occurred with the former LEP assessment program.

Establishing English Language Content Standards Aligned with State Standards. This is laid out in three main documents referred to by James Kadamus, Deputy Commissioner of Education, as the "Trilogy of Language Arts" for LEP students.³⁷ The first document is *The Teaching of Language Arts to Limited English Proficient/English Language Learners: A Resource Guide for All Teachers*³⁸ which is undated. This publication presents descriptions of current research studies, identifies strategies and techniques, and lists resources to enable school personnel to support the development of proficiency in English, while at the same time maintaining the first languages. The second document

Only 9 percent of New York LEP students attained the English proficient level, although this exceeded their goal of 5 percent.

LAB-R, administered in 2002-03 and used statewide to initially identify students who are LEP. It consists of four sub-tests in listening, speaking, reading and writing in five grade level groupings (K-1, 2-3, 4-5, 6-8, 9-12).

The second new assessment instrument is the New York state ESL Achievement Test (NYSESLAT), developed by the Educational Testing Service and the state. It was first administered on a statewide basis in May 2003 to annually measure achievement in English proficiency and to determine whether a student should be redesignated FEP. The state claims the test is based on the state's English as a Second Language standards, which are aligned with the state standards for ELA. The NYSESLAT evaluates the English language proficiency of LEP students, K-12, in listening, speaking, reading and writing, and categorizes the student as beginning, intermediate, advanced or proficient. In order

is *The Teaching of Language Arts to Limited English Proficient/English Language Learners: Learning Standards for English as a Second Language, 2004*,³⁹ which is supposed to provide the framework for interweaving teaching, learning, assessment, student work and the NYSESLAT. The third document is *The Teaching of Language Arts to Limited English Proficient/English Language Learners: Learning Standards for Native Language Arts, 2004*,⁴⁰ which does not seem to differ much from the learning standards for ESL.

The Teaching of Language Arts to Limited English Proficient/English Language Learners: Learning Standards for English as a Second Language resembles those found in the other states. It discusses tasks and performance indicators for beginning, intermediate and advanced students at several grade clusters. These tasks and performance indicators seem reasonable and professional, but there is no explana-

³⁷ January 28, 2004 memo from James Kadamus, Deputy Commissioner, to the Board of Regents of the State of New York. Available at <http://www.regents.nysed.gov/2004Meetings/February2004/0204emscvesidd4.htm>.

³⁸ Available at <http://www.emsc.nysed.gov/ciai/biling/resource/res.html>.

³⁹ Available at <http://www.emsc.nysed.gov/ciai/biling/resource/ESL/standards.html>.

⁴⁰ Available at <http://www.emsc.nysed.gov/ciai/biling/resource/NLA.html>.

tion as to how the skills get a student to the proficient score on the state proficiency test.

New York is similar to Illinois in placing a strong emphasis on native language learning and the facilitation theory. Kadamus states in his January 28, 2005 letter to the Board of Regents that “Research has shown that students with strong skills in their native language acquire English proficiency through skills transference much faster than those with no or limited native language skills. Furthermore, study of the native language while learning English has the added value of developing bilingual and biliterate students. It is urgent, therefore, to continue to identify strategies to strengthen the native language arts program.”

While the first sentence is true – it is easier to teach a child English who already has strong skills in their native language – that tells us nothing about how to educate a child who does not have strong skills in their native language. The two ideas are unrelated. In fact, although it is easier to teach a student who has strong skills in his or her native language, if he or she does not already have these skills, it is usually more efficient and effective to go straight to English rather than to develop the native language *if* one’s goal is the highest English language achievement that a child is capable of (see Rossell and Baker, 1996a, 1996b; Rossell and Kuder, 2005).

Annual Measurable Achievement Objectives. New York has a wider variety of assessment tests than any other state reviewed in this paper. There are approximately 20 different tests, including a reading test in Spanish and one in Chinese, and a set of tests for students in K-3 called the Early Childhood Literacy Assessment System.⁴¹

With regard to the first Title III AMAOs, the standard for satisfactory progress in acquiring English is improvement by at least one level (beginning, intermediate, advanced and proficient) each year on the NYSESLAT. For example, students who scored at the beginning level in May 2003 were expected to score at the intermediate level in May 2004. Students who reach proficiency are counted as making satisfactory progress.

With regard to the second Title III AMAO, there are two ways for an LEP student to be designated proficient. The first is to score at the proficient level on the two domains of the NYSESLAT – listening/speaking and reading/writing. Students are also redesignated English proficient if they reach proficiency on the elementary or middle-level English language arts assessment, or score 55 or higher

on the Regents (high school) English examination and achieve a criterion score on the listening/speaking domain of the NYSESLAT, or achieve a criterion total score based on the sum of scores achieved on each of the four NYSESLAT subtests.

Title I AMAOs are achieved by obtaining the proficient score on a performance index in reading/language arts and mathematics that ranges from 0 to 200.⁴² The state has defined proficient as Level 3 on the grade 4 or 8 English language arts assessment, Level 3 growth on the NYSESLAT, a score of 65 on the Regents examinations, or passing an approved alternative to a Regents examination. The Title I AMAOs were set using the standard procedure of selecting the percent proficient of the school at the 20th percentile in enrollment starting at the bottom when schools are rank ordered by percent proficient. The goal is 200 by 2013-14, but in 2004-05, LEAs varied widely with a range between 93 and 148, which makes this goal appear remote.

All state tests except ELA are translated into a number of different languages, such as Spanish, Haitian-Creole, Russian, Chinese and Korean. New York also provides glossaries in all other languages and permits oral translations. The federal Education Department has approved the use of the NYSESLAT as the required measure of language arts for LEP students in grades 4 and 8 who have attended school in the United States for fewer than three consecutive years and, on an individual basis for LEP students who have attended for four or five years. It is being scaled so it is similar to the ELA exams, supposedly in order to measure academic progress in the English language when students transition from one test to the other.

Table 1 shows on average 71 percent of New York LEP students made progress in learning English, which exceeded their goal of 50 percent. However, only nine percent attained the English proficient level, although this too exceeded their goal of 5 percent. The state reported no information on the percentage of LEAs meeting their AMAOs.

Table 2 shows that an average 45 percent of currently LEP students achieved the proficient level in math, although they may have taken the test in their native language. This was 54 percent of second grade LEP students and 26 percent of 8th grade students. The state reported no other Title I achievement data for LEP students nor did it report targets. Peterson and Hess give New York a C and rank it 16th out of 40 in terms of the strength of its standards for all students.

⁴¹ See http://www.nycenet.edu/daa/test_info.

⁴² At the elementary and middle levels, the PI is the [(number of continuously enrolled tested students scoring at Levels 2, 3, and 4 + the number scoring at Levels 3 and 4) ÷ number of continuously enrolled tested students] X 100. At the high school level, the PI is the [(number of cohort members scoring at Levels 2, 3, and 4 + the number scoring at Levels 3 and 4) ÷ number of cohort members] X 100.

Texas

Defining a Limited English Proficient Child.

Texas does not use a single home language survey. It does, however, issue guidelines for determining LEP status in the state's *Framework for the Language Proficiency Assessment (LPAC) Process Manual*. The manual contains a sample home language survey with two questions: what language does the child speak at home and what language does the child speak most often. Districts do not have to use these specific questions and are free to add to them.



Since the classification of a child as LEP differs from test to test, a child can conceivably be classified LEP in one district in Texas, but not in another. In this regard, Texas is different from the other states discussed in this paper, all of whom have sensibly concluded that monitoring is easier if every district in a state is using the same test.

Establishing English Language Content Standards Aligned with State Standards. The English language (ELP) content standards for LEP students consists of the Spanish language arts TEKS (Texas Essential Knowledge and Skills) in grades K-6 and the English as a Second Language TEKS in grades K-12, aligned with the state standards in September 1997. As with the other states, these are broken down by grade level, but unique to Texas is that the stan-

Figure 3. 20% Method Starting Point Compared to Actual Starting Points

	Reading	Mathematics
20 th percentile of performance	46.8	33.4
Percent proficient by student group:		
African American	48.3	33.3
Hispanic	49.8	40.5
White	74.3	61.9
Economically Disadvantaged	48.7	38.8
Special Education	40.2	30.1
Limited English Proficient	28.8	30.7

Source: Texas Consolidated State Application Accountability Workbook, July 27, 2004, p.25.

However, since the state conducts annual training on the content and procedures of the LPAC manual, the sample home language survey is widely used by school districts.

Nor does Texas have a single English language proficiency test that identifies a child as LEP. Despite the fact that, as shown in Appendix 1, it is part of a consortium that is developing a single English language proficiency test, it does not plan to use that test. Texas will continue to give responsibility to the district Language Proficiency Assessment Committee to determine the appropriate state-approved English proficiency test for their district. For Pre-K-grade 1 students, a district LPAC must select an oral language proficiency test from the list of state-approved tests. For students in grades 2-12, a district LAPC must select an oral language proficiency test from the list of state-approved tests and the English reading and English language arts sections of a state-approved norm-referenced achievement test.

dards for Spanish language arts (SLA), as well as those for LEP English language proficiency, are aligned with the state English language standards for all students (TEKS). In addition, unlike the other states, the content standards for LEP students appear to be the same as those for other students. And as with the other states, although the standards seem professional and reasonable, none of the essential skills are tied to specific state achievement test scores.

Annual Measurable Achievement Objectives. The statewide assessment program includes the Spanish and English Texas Assessment of Knowledge and Skills (TAKS), the State Developed Alternative Assessment (SDAA II), and the Reading Proficiency Tests in English (RPTE) which is part of the TELPAS system for LEP students to address Title III requirements. In the past, the Texas Assessment of Academic Skills (TAAS) was the high school graduation test, but it has been replaced by the TAKS.

The TAKS, mandated by the Texas legislature in 1999 and administered in 2002-03, measures the statewide curriculum in reading, writing, English Language Arts, mathematics, science, and social studies. The Spanish TAKS is administered in grades 3-6. The TAKS has also replaced the TAAS as the exit test for high school students, that is, the prerequisite to a high school diploma. The SDAA II assesses special education students in grades 3-8 who are receiving instruction in the Texas Essential Knowledge and Skills (TEKS) but for whom TAKS is an inappropriate measure of their academic progress.

The English proficiency of LEP students (Title III) is tested annually with the TELPAS, which consists of the RPTE, implemented in Spring 2000, and “The Observation Protocols” (TOP). In grades K-2, the TOP includes listening, speaking, writing and reading, but in grades 3-12, the TOP only includes listening, speaking and writing since those students have their reading assessed by the RPTE reading test.

Texas also has the highest percentage of formerly LEP students (within two years of reclassification) being classified as proficient in math (76 percent) and language arts (79 percent) of the seven states.

The TELPAS composite score is based on the results of both tests. Performance in each language’s domain is weighted and this weighting formula is used to generate TELPAS composite scores and ratings of beginning, intermediate, advanced, and advanced high. When a student scores advanced high, they are supposed to switch to the mainstream TAKS. These tests are designed to measure annual growth in the English reading proficiency of second languages learners, and are used along with the English and Spanish TAKS to provide an annual assessment system for LEP students in grades 3-12.

According to the state accountability report, the first Title III AMAO (progress) that Texas has set for LEP students is that 40 percent of students in a district must progress at least one proficiency level each year based on the TELPAS composite rating. Achieving AMAO 2 (attaining proficiency) is more complicated. The standard for grades K-2 is 1.5 percent of current LEP students receiving a TELPAS composite rating of advanced high. For students in grades 3-12, there are two ways to achieve AMAO 2 (attaining proficiency) based on how long LEP students have been in the U.S. The first is to have 25 percent of the LEP stu-

dents in a district attaining a TELPAS composite rating of advanced high. The second is to have 40 percent of the current and monitored (formerly) LEP students that have been in the U.S. three or more years for grade 3, or four or more years for grades 4-12, score at the advanced high level on the TELPAS (current LEP) or passing TAKS reading/ELA (monitored LEP).

In Texas, the starting point for Title I AYP in both reading and mathematics is actually lower than that of its minority and economically disadvantaged sub-groups, and only a few points more than its special education students, as shown in Figure 3.

It is a different story, however, for LEP students. The starting point for them is still almost 20 points higher than their actual starting point. Like California, students are included in the LEP student group until they score at the Met Standard level on the English TAKS reading test for two consecutive years (in California it is three years) after entering a regular, all English instructional program.

Texas makes the same claim as California that this is consistent with the federal definition of LEP students in paragraph (25) of Section 9101 of Title IX of NCLB as those with “difficulties in speaking, reading, writing, or understanding the English language [that] may be sufficient to deny the individual – the ability to meet the State’s proficient level of achievement on State assessments described in section 1111(b)(3).” They also assert it is consistent with the state definition (19 TAC 89.1225). In other words, if an LEP student does not attain the state’s proficient level, they are still LEP regardless of what the English language proficiency test shows *and* even if they do attain the state’s proficient level, they must maintain that level for two years. This will help raise the scores of LEP students as a sub-group, but probably not enough to get them to 100 percent at the proficient level in 2013-14.

The LPAC must determine the appropriate assessment option for each LEP student. In grades 3-6, the language proficiency assessment committee determines whether a non-special education LEP student is administered the assessment of academic skills (TAKS) in English or in

Spanish. The Spanish version may be taken a maximum of three years and in individual cases for two more years.

The LPAC also decides if an LEP student is eligible for an exemption as outlined in the state's LPAC Decision-Making Process for the Texas Assessment Program (Grades 3-12). An LEP student may not be exempted from the exit level assessment of academic skills on the basis of limited English proficiency. However, LEP students who have been in the U.S. for no more than a year may postpone the initial administration of the exit level test once.

As shown in Table 1, Texas surpassed its Title III AMAOs by a considerable amount both in terms of the percent of LEP students making progress in learning English and the percent of LEP students attaining English proficiency on the TELPAS. The average target set by Texas across four grade cohorts is 48 percent making progress, but in fact 54 percent made progress in learning English. The average target for the percentage of students attaining English proficiency across four grade cohorts in a year is two percent, but in fact Texas achieved 33 percent. There is no information on the percentage of districts that met their Title III AMAOs in 2003-04.

Table 2 shows that Texas had the highest percentage of LEP students proficient in math (50 percent) and in language arts (45 percent) of the seven states studied in this paper and it is above the average for all states. Despite all the accommodations, including native language tests, only five of the nine grades (3-12) that were tested achieved their target in math, and only four of the nine grades achieved their target in language arts. In addition there was very little progress from 2002-03. The percentage proficient in math declined by 7 points from 2002 and the percent proficient in language arts increased by 1 point.

Texas also has the highest percentage of formerly LEP students (within two years of reclassification) being classified as proficient in math (76 percent) and language arts (79 percent) of the seven states, and they made progress from the previous year. According to Peterson and Hess, 2005, the percentage proficient on the TAKS is so much higher than the percentage proficient of Texas students on the NAEP, that Texas is one of only two states they have given an F to (the other is Tennessee) for the lack of rigor in their standards for all students. I would not, however, give them an F for their lack of rigor in the standards for LEP students. With the exception of the use of native language tests which is permitted by NCLB, I would say based on their outcomes that their standards are not low for LEP students.

Assessment of Achievement in the Seven States

Except for Massachusetts, every state that reported data achieved their average target for AMAO 1 of Title III (making progress). All states except Massachusetts also met or surpassed their average target for AMAO 2 – the annual percentage of LEP students attaining English proficiency. These percentages are, however, not in line with the actual percentage of LEP students achieving English proficiency in a year, which is usually around 8 percent, so either states (e.g. California) carefully picked the cohort that would be best able to attain English proficiency, or they lowered their standards for proficiency, or as is the case with Arizona and Florida, just did not report the data. Indeed, three of the seven states (43 percent) did not report the percentage of LEAs meeting their AMAOs compared to only 20 percent of the other 44 states (including Washington D.C.).

The first and most obvious improvement NCLB has provoked in state monitoring of LEP performance is the trend towards a single standard for identifying, assessing and redesignating an LEP child within a state.

The seven states fared worse with regard to Title I targets. They either did not have goals or they did not meet them. The average percentage proficient in math and language arts was 34 and 24 percent respectively. Across the seven states, none of them met their math or language arts goals for every grade. There was an average 1 point decline in the percent proficient in math and 1 point increase in the percent proficient in language arts from 2002-03.

The combined average for all states (see Appendix 3) as higher than that of these seven. The average percentage of LEP students proficient in math was 41 percent and in language arts 39 percent, well above that of the seven except Texas.

With regard to formerly LEP students redesignated within the last two years, the average for the seven states was 53 percent proficient in math and 51 percent proficient in language arts, with Texas again being well above the other six. There was, however, little or no improvement in this percentage from the previous year. The average for all states was 56 percent proficient in math and 60 percent proficient in language arts.

The Benefits of NCLB

Despite the shortcomings in the law, there is much that is good about NCLB. The first and most obvious improvement it has provoked in state monitoring of LEP performance is the trend towards a single standard for identifying, assessing and redesignating an LEP child within a state. Prior to NCLB (or in a few states their own state laws) every school district in most states used a different home language survey (the initial screening device) and a different English language proficiency test which meant that LEP achievement could not be compared from district to district.

All the states in this paper, except Massachusetts and Texas, use a single home language survey and all except Texas, either currently use a single English language proficiency test for annual assessment or are developing one for implementation in 2005 or 2006. In addition, almost all use

the same English language proficiency test for initial identification and redesignation or are planning to do so. Because of NCLB, the trend is toward statewide instruments for LEP identification, annual assessment and redesignation because nothing else makes sense if states are responsible for the achievement of LEP children in every district. Greater coordination will improve the monitoring of the progress of LEP students.

A second benefit of NCLB is that it holds states and school districts accountable for the achievement of LEP students. I personally have always believed that state agencies, school districts, schools and teachers cared deeply about the achievement of LEP children and that much of the criticism of educators resulted from confusion. Many people, including educators themselves, have mistakenly believed that the low achievement of LEP students as a group meant that individual students were not progressing and that this “lack of progress” was due to the incompetence or indifference of the educators. As I hope I have made clear by now, that is simply not true. Even if all individual LEP students make tremendous progress, the group as a whole will always have lower achievement because that is how the group is defined – that is the students who make progress and achieve a high score exit the group leaving only lower scorers in it.

Nevertheless, I am willing to entertain the possibility that amidst the pressing demands of the many vocal educational interest groups in a state, the voice of the LEP parent constituency might not be expressed or might sometimes get lost. And there is some evidence to suggest this as we would not have bilingual education laws were the parent voice always heard, since the research indicates that only a minority of parents of LEP children support such programs (Rossell and Baker, 1996b). So NCLB is to be credited with focusing state and LEA attention on LEP achievement, even though NCLB itself is pretty confused on this issue.

A third benefit of NCLB, related to accountability, is that it requires that LEP students be tested annually. Prior to NCLB, various studies have documented that the LEP children in bilingual education were tested at about half the rate of LEP children in mainstream classrooms with ESL pullout (see Rossell, 2002). This had two negative outcomes – the bilingual education programs avoided accountability

LEP programs. Nationally Title III is now reaching about 80 percent of LEP students. In the states with large LEP populations, it appears to be close to 100 percent.

Recommendations for Change

I do not believe that the poor performance of the seven states discussed in this paper is due to state and school district incompetence or indifference. I believe it is mostly due to their deference to unrealistic NCLB standards. The following are recommendations as to how NCLB could be more reasonable with regard to LEP student achievement.

Title I AYP. Current data, and common sense as well, indicate that it is impossible for all current LEP students as a group to meet any state's proficient standards. Policymakers must consider that when a group is defined by their low achievement in English, they must have low achievement in English or someone has made a mistake.

Because of NCLB, the trend is toward statewide instruments for LEP identification, annual assessment and redesignation because nothing else makes sense if states are responsible for the achievement of LEP children in every district.

and the biased testing rates distorted program evaluations such that bilingual education looked better than it was (since it is the lowest-scoring students who are not tested.)

A fourth benefit is that states have developed new English language standards that are aligned with the state curriculum for all students. I have reviewed those of the seven states discussed in this paper, and they strike me as reasonable and professional. In most cases NCLB has been the impetus for perfecting and standardizing them and for aligning them with what all students show know at a grade. Although I do not believe that these standards will ensure that LEP students get to the state's proficient level because I could not find any state official who could explain how the specified tasks and skills got a student to a specific score, I do think these standards will improve the education of LEP children by giving all teachers in a state the same benchmarks and skills they should be looking for at different grades and different English proficiency levels.

A fifth benefit of NCLB is that by changing Title III from a competitive, discretionary grant that had to be applied for to a formula grant based on LEP enrollment, many more LEAs are now receiving federal funding for their

This then is the LEP definitional problem — that is, when an LEP child's achievement rises to the proficient level, they are removed from the LEP group.

The recent revisions to Title I for LEP students, while they move in the right direction, are inadequate for solving this problem. Allowing states to include formerly LEP students for up to two years in the category called LEP will have little effect, because the two year redesignated students will have only slightly higher scores than the currently LEP students. They are also a small population compared with a large category of children defined by their low achievement. In short, current LEP students and monitored LEP students as a group should not be expected to achieve at the state's proficient level unless that level is at the median of children who are learning English, which I do not think is a good idea nor what the framers of NCLB had in mind nor what the states would want, at least at this point in time when the deadline is eight years away.

- Recommendation: Current and formerly LEP students should be exempted from meeting the state's proficient level in any subject matter – math, language arts, science, social science and whatever other subjects are

added in the future – until they have been educated in the U.S. for five full academic years.

- Recommendation: LEP, and formerly LEP, students should show annual progress towards meeting the state's proficient level in all subject matters. That progress should be assessed for *individual* students for whom there are two years of test scores and the progress should be in terms of scores, not categories or levels which are too broad.
- Research should be conducted on samples of students to determine a definition of progress that is both ambitious and yet achievable by competent educators.
- In order to discourage failure to redesignate, LEP students who score at the proficient level on the state English language proficiency test for LEP students, but who are not redesignated will not count towards the participation rate and their scores will not be included in LEP scores.
- In order to discourage failure to redesignate, elementary (K-5) LEP students who have been educated in the U.S. for three years who have not been redesignated (see Title III section) will not count towards the participation rate and middle/high students who have been educated in the U.S. for five years who have not been redesignated will not count towards the participation rate.

Native Language Tests. It is a glaring contradiction in NCLB that LEP students can take the state proficiency tests in their native language for up to five years. It is hypothetically possible that 100 percent of LEP students might make the state's proficient level in every subject (except English language arts) because they took it in their native tongue. But what does that mean?

For one thing, tests are not equally difficult in different languages. For another, is a student really at the state's proficient level if he or she cannot pass the test in the language of this country? It is to be expected that as the deadline looms and nothing else changes, more and more states are going to dedicate considerable time and expense developing not just Spanish-language exams, but exams in dozens of different languages in order to meet the 2014 goal.

I also worry that this loophole might encourage more states to expand their bilingual education programs in an attempt to improve the native language proficiency of their

LEP students. This will not, unfortunately, improve their education (Rossell and Baker, 1996a, 1996b).

- Recommendation: Native-language tests should be prohibited by DOE. They are misleading and could encourage native language instruction for the purpose of meeting the state's proficient level.

Alternative Tests. These may be as misleading as native language tests. What does it mean for an LEP student to reach their state's proficient level if they have taken a different test? In short, they have not reached the proficient level – who knows what level they have reached?

- Recommendation: Alternative tests are misleading and should be prohibited by DOE, but only if LEP and formerly LEP students are exempted from meeting the state's proficient level until they have been in the U.S. for five full years.

The Starting Point for AYP. As discussed above, the starting point for the annual AYP goals makes little educational or logical sense. The legislation states on p. 1447:

The starting point shall be, at a minimum, based on the *higher* [emphasis added] of the percentage of students at the proficient level who are in—“(i) the State's lowest achieving group of students described in subparagraph (C)(v)(II);” or“(ii) the school at the 20th percentile in the State, based on enrollment, among all schools ranked by the percentage of students at the proficient level.”

Why the 20th percentile in enrollment? Why not the 15th or the 25th, and why focus on the 20th percentile in *school enrollment* rather than on the 20th percentile (or some other percentile) in state proficiency test scores? In addition, the higher of the two makes no sense at all. I have communicated with people who think that the choice of higher was selected because lower would mean lower standards. However, since the goal is 100 percent proficiency for every sub-group, it is not lowering the standards for any group to say lower rather than higher as the *starting* point.

The accountability provisions of NCLB are what make this unequal starting point so dangerous. By using the higher of the two standards, the starting point for every subgroup except whites in almost every state is much higher than their actual starting point. For LEP students their state-imposed starting point is about 20 points higher than their actual starting point. Schools with large numbers of sub-groups whose starting point was set 20 points above their actual

starting point could start encountering penalties despite having made as much progress as another school which was lucky enough to have a sub-group whose starting point matched the single state established starting point.

Based on this reasoning, the law's fundamental requirement that all sub-groups end at 100 percent proficiency in 2013-14 seems arbitrary and even capricious when they started at very different places. Schools explain only a quarter or less of the variation in academic achievement. Students start school with very different amounts of social capital and they are in school only 13 percent of their waking hours. If the current time table and standards are kept uniformly for all groups, the states will either lower the standard for proficient or ignore the accountability provisions of the law or in the case of LEP students, test them in their native language or an alternative test on which they can be declared proficient.

- Recommendation: Each sub-group should have its own starting point for percentage proficient and it should have a realistic ending point and/or a realistic year. One size fits all is not realistic.

Title III Standards. English language proficiency tests will always over identify a child as LEP because they cannot tell the difference between a child who does not know English and a child who does not know the answer. And educators are, unfortunately, generally too deferential to test results, often misunderstanding their meaning, and often too committed to the notion that a child should not be redesignated until they have fully mastered "academic English." A child can be quite fluent in English before they have fully mastered "academic English," since the latter is usually a very high standard that only a minority of students can reach.

Therefore, there must be a mechanism to override the English proficiency test results, both in terms of initial designation and annual assessment. Although I personally would like to substitute the term "language minority family" for "limited English proficient" or "English Language Learner" since you would not have to rely on invalid and unreliable English language proficiency tests to get the child redesignated, the test industry is too strong to ever let that happen and they have the support of much of the education industry in that regard.

- Recommendation: Any child from a language minority family who has been educated in the U.S. for three years who is designated LEP by an English language proficiency test either at entry or exit should have the test overridden and be designated fluent English proficient.

- These redesignated students should still be required to show annual progress for the next two years, at a minimum.
- Teachers or LPACs should not be allowed to counter this.
- Recommendation: States should administer the LEP English proficiency test to samples of English monolingual students to see what percentage are misidentified as LEP so they understand the extent of the bias they are dealing with.

Annual Progress in Learning English. The current situation of having the progress of cohorts of LEP students defined differently from state to state is untenable. Some states look at the entire LEP group in a grade cluster, others like California and Arizona sensibly define a cohort as a student with two years of test scores. The states who look only at the group of LEP students in a grade cluster are setting themselves up for failure for the reasons discussed above.

- Recommendation: The definition of the cohort of LEP students should be uniform – it should be LEP students with test scores on the same English proficiency test at two points in time (which is why there needs to be at least a statewide English proficiency test). It should not be the group of LEP students as that will produce little or no progress.
- Recommendation: Progress should be defined in terms of the scores that individual students achieve and it should be something individual LEP students might be able to achieve with effort.⁴³
 - States should analyze the progress in scores of samples of *individual* LEP students on the English proficiency test to determine a gain that is ambitious, yet achievable within current resources by competent teachers.
 - States should establish a confidence interval around this progress that would compensate for the unreliability of the tests.
 - States should analyze the progress of samples of *individual* formerly LEP students and separately the progress of English monolingual students on the English proficiency test to understand the biases of the tests in measuring progress.

⁴³ Many test publishers claim that the scores have no reliability from one year to the next and so one has to look at categories or levels. State educational agencies accept this, but they should instead demand the tests be more reliable.

- Recommendation: If annual progress is to be measured from one level to another on a four or five category test, the percentage of LEP students who should achieve it should not be 100 percent as those categories are too big for all LEP students to advance one level in a year.
- States should experiment with determining the percentage of LEP students who might be expected to progress from one level to another balancing that against the fact that the test is designed so that not all students will be designated English proficient (see below).
- States should experiment with administering their English proficiency test to English monolingual students to determine the extent of false positives (students who are fluent in English, but classified as LEP) and adjust the percentage of the cohort that must attain English proficiency downward by the false positive percentage.

Attaining English Proficiency. The goal of attaining English proficiency is fraught with error even if all states were monitoring individual students. The tests are normed on a mix of high scoring LEP students and English speaking students and the criterion score chosen to redesignate an LEP child would classify some unknown percentage of fluent English proficient children as limited English proficient. Put another way, the old tests were constructed so that not every LEP child can achieve the English proficient level and it is not clear if the new tests are any better since it seems to me that there will always be children who are fluent in English, but do not know the answer.

- Recommendation: the cohort of students that should be expected to attain English proficiency (which is different from the state's proficient level) should be elementary (K-5) students who have been in the U.S. for three years and older students who have been in the U.S. for five years.

In striving to comply with NCLB, the goal of educators and education policymakers across the United States should be to keep its spirit of competition and accountability, but to come up with ambitious, yet achievable goals tailored to the different starting points and facts about sub-groups and what schools can reasonably be expected to accomplish. I have made some specific recommendations for LEP students above, but others have made recommendations for the legislation in general. One such recommendation is to change the goal from the NAEP proficient level to the NAEP basic level (see Linn, Baker, Betebenner, 2002), which would still be challenging and might actually be achievable. If it is achievable by LEP students, however, it is probably too low.

I believe that NCLB at a minimum should focus on improvement in students' individual scores, not just increases in the percentage achieving the state proficient level, and the progress of individual students in sub-groups should be tracked, not just the sub-group as a whole. Right now the states are laboring under an arbitrary one-size-fits-all schedule and time table that they were forced to adopt and are gamely trying to adhere to. One cannot help but admire their commitment, intelligence, energy, and just plain pluckiness, but they are not going to succeed without lowering their standards unless NCLB is reformed so that it is both ambitious and realistic and not just for LEP students.

Appendix I
State LEP Populations Served by Title III, 2003-2004*

Alphabetical List of States	LEP Title III 2003-2004	% LEP of PK-12 Student Enrollment 2003-2004 ^a	States Ranked by Size of Title III LEP Population, 2003-2004	Consortium	States Ranked by % LEP of PK-12 Student Enrollment, 2003-2004	Consortium		
U.S. Total	4,017,504	8.3	U.S. Total	4,017,504	U.S. Total	8.3		
U.S. Mean	78,775	5.7	U.S. Mean	78,775	U.S. Mean	5.7		
U.S. Median	21,839	4.2	U.S. Median	21,839	U.S. Median	4.2		
Alabama	11,815	1.6	California^b	1,554,172	SCASS	California^b	24.5	SCASS
Alaska	15,588	11.6	Texas^b	604,721	SCASS	Nevada	23.1	SCASS
Arizona	161,213	17.2	Florida	206,660	EPAS	New Mexico	19.4	MWAS
Arkansas	13,533	3.0	Arizona	161,213		Arizona	17.2	
California	1,554,172	24.5	Illinois	149,589	WIDA	Texas^b	14.2	SCASS
Colorado	91,751	12.2	New York	107,293		Colorado	12.2	MWAS
Connecticut	24,840	4.4	Colorado	91,751	MWAS	Alaska	11.6	
Delaware	3,629	3.1	Nevada	85,521	SCASS	Utah	10.1	MWAS
D.C.	5,015	6.6	North Carolina	69,888		Oregon	10.1	MWAS
Florida	206,660	8.1	Georgia	66,695		Hawaii	8.6	
Georgia	66,695	4.5	Washington	63,868		Florida	8.1	EPAS
Hawaii	15,750	8.6	New Mexico	61,973	MWAS	Illinois	7.2	WIDA
Idaho	17,171	6.9	Michigan	61,941	EPAS	Idaho	6.9	MWAS
Illinois	149,589	7.2	Virginia	57,473		D.C.	6.6	WIDA
Indiana	19,447	1.9	Oregon	55,840	MWAS	Washington	6.3	
Iowa	14,571	3.0	Minnesota	50,158		Minnesota	5.9	
Kansas	21,839	4.6	Utah	49,513	MWAS	Oklahoma	5.4	SCASS
Kentucky	10,471	1.6	Massachusetts	48,758		North Carolina	5.2	
Louisiana	8,376	1.1	Wisconsin	45,907	WIDA	Wisconsin	5.2	WIDA
Maine	2,251	1.1	Pennsylvania	41,606	EPAS	Massachusetts	5.0	
Maryland	27,849	3.2	New Jersey	35,646	SCASS	Virginia	4.9	
Massachusetts	48,758	5.0	Oklahoma	33,762	SCASS	Nebraska	4.8	SCASS
Michigan	61,941	3.5	Maryland	27,849	EPAS	Kansas	4.6	
Minnesota	50,158	5.9	Ohio	26,234	SCASS	Georgia	4.5	
Mississippi	3,698	0.8	Connecticut	24,840		Connecticut	4.4	
Missouri	13,121	1.4	Kansas	21,839		Rhode Island	4.2	WIDA
Montana	2,425	1.6	Indiana	19,447	SCASS	New York	3.7	
Nebraska	13,734	4.8	Idaho	17,171	MWAS	Michigan	3.5	EPAS
Nevada	85,521	23.1	Hawaii	15,750		Maryland	3.2	EPAS
New Hampshire	2,570	1.2	Alaska	15,588		Delaware	3.1	WIDA
New Jersey	35,646	2.6	Tennessee	14,720	EPAS	Iowa	3.0	SCASS
New Mexico	61,973	19.4	Iowa	14,571	SCASS	Wyoming	3.0	MWAS
New York	107,293	3.7	Nebraska	13,734	SCASS	Arkansas ^b	3.0	WIDA
North Carolina	69,888	5.2	Arkansas ^b	13,533	WIDA	New Jersey	2.6	SCASS
North Dakota	2,503	2.4	Missouri	13,121		North Dakota	2.4	MWAS
Ohio	26,234	1.4	Alabama	11,815	WIDA	Pennsylvania	2.3	EPAS
Oklahoma	33,762	5.4	Kentucky	10,471	SCASS	Indiana	1.9	SCASS
Oregon	55,840	10.1	South Carolina	9,573	SCASS	Montana	1.6	MWAS
Pennsylvania	41,606	2.3	Louisiana	8,376	SCASS	Alabama	1.6	WIDA
Rhode Island	6,711	4.2	Rhode Island	6,711	WIDA	Tennessee	1.6	EPAS
South Carolina	9,573	1.4	D.C.	5,015	WIDA	Kentucky	1.6	SCASS
South Dakota	1,740	1.4	Mississippi	3,698		Ohio	1.4	SCASS
Tennessee	14,720	1.6	Delaware	3,629	WIDA	Missouri	1.4	
Texas	604,721	14.2	Wyoming	2,646	MWAS	South Carolina	1.4	SCASS
Utah	49,513	10.1	New Hampshire	2,570	WIDA	South Dakota	1.4	
Vermont	862	0.9	North Dakota	2,503	MWAS	New Hampshire	1.2	WIDA
Virginia	57,473	4.9	Montana	2,425	MWAS	Louisiana	1.1	SCASS
Washington	63,868	6.3	Maine	2,251	WIDA	Maine	1.1	WIDA
West Virginia	874	0.3	South Dakota	1,740		Vermont	0.9	WIDA
Wisconsin	45,907	5.2	West Virginia	874	SCASS	Mississippi	0.8	
Wyoming	2,646	3.0	Vermont	862	WIDA	West Virginia	0.3	SCASS

* Source: Biennial Evaluation Report to Congress on the Implementation of Title III, Evaluation Element 3

^a As of the writing of this paper, 2003-2004 state enrollment data was not available so 2002-2003 enrollment data was used as the denominator and 2003-2004 LEP enrollment as the numerator.

^b Not planning to use the English language proficiency test being developed by their consortium.

Appendix 2

Title III-served LEP Students Scoring at the Proficient Level or Above by Grade Level,
2002-03 and 2003-04

	Mathematics		Reading/Language Arts		Math Change	ELA Change
	% Proficient or Above, 2002-03	% Proficient or Above, 2003-04	% Proficient or Above, 2002-03	% Proficient or Above, 2003-04		
AVERAGE	31	34	27	27	2	0
ARIZONA						
Grade 3	32	31	34	32	-1	-2
Grade 5	18	14	17	14	-4	-3
Grade 8	4	5	13	11	1	-2
Grade 10	7	10	14	12	3	-2
Weighted Average	26	23	26	24	-3	-2
CALIFORNIA						
Grade 3	33	36	17	15	3	-2
Grade 4	34	33	21	22	-1	1
Grade 5	24	24	18	20	0	2
Grade 6	20	19	17	14	-2	-2
Grade 7	18	17	17	15	0	-2
Grade 8	18	15	15	13	-3	-2
Grade 10	24	27	25	24	3	-1
Weighted Average	27	27	19	18	1	0
FLORIDA						
Grade 3	35	40	28	37	5	9
Grade 4	26	38	22	36	12	14
Grade 5	23	25	16	18	2	2
Grade 6	17	18	12	12	1	0
Grade 7	19	19	12	12	0	0
Grade 8	24	26	10	8	2	-2
Grade 9	24	22	3	3	-2	-1
Grade 10	30	24	3	4	-6	1
Weighted Average	26	30	19	28	4	9
ILLINOIS						
Grade 3	48	52	41	34	4	-7
Grade 4			25	15		-10
Grade 5	32	32	33	26	0	-7
Grade 6			19	27		8
Grade 7			25	32		7
Grade 8	20	20	31	36	0	5
Grade 9			6	6		0
Grade 10			9	8		-1
Grade 11	23	24	9	10	1	1
Weighted Average	43	44	34	28	1	-2
MASSACHUSETTS						
Grade 3			21	24		3
Grade 4	12	15	15	16	3	1
Grade 6	9	10			1	
Grade 7			19	16		-3
Grade 8	8	9			1	
Grade 10	29	25	16	10	-4	-6
Weighted Average	19	17	18	19	0	-1
NEW YORK						
Grade 4	*	54	*	*	*	*
Grade 8	*	26	*	*	*	*
Grade 11	*		*	*	*	*
Weighted Average	*	45	*	*	*	*
TEXAS						
Grade 3	85	85	77	82	0	5
Grade 4	61	63	65	68	2	3
Grade 5	68	60	48	42	-8	-6
Grade 6	49	47	49	50	-1	1
Grade 7	35	33	46	39	-2	-8
Grade 8	32	28	45	48	-4	3
Grade 9	26	21	31	38	-5	7
Grade 10	43	27	23	25	-16	2
Grade 11	37	59	33	42	23	9
Weighted Average	47	50	49	45	-7	1

Source: U.S. DOE, Biennial Report, 2005.

* State reported data not available.

Appendix 3
Title I: Achievement of LEP and Formerly LEP Students in U.S.

	Table 2.3a (Title I)				Table 2.3b (Title I)				Title I		Table 7.2a (Title I)	Table 7.2b (Title I)
	% LEP Profic. in Math, 2002-2003	% LEP Profic. in Math, 2003-2004	Proj. % LEP Profic. In Math, 2003-2004	Change from 2002-2003 in % Profic. Math	% LEP Profic. in Lang. Arts , 2002-2003	% LEP Profic. in Lang. Arts , 2003-2004	Proj. % LEP Profic. In Lang. Arts, 2003-2004	Change from 2002-2003 in % Profic. Lang. Arts	% States Meeting Avg. Math Goal 2003-2004	% States Meeting Avg. LA Goal 2003-2004	% Former LEP Proficient Math, 2003-2004	% Former LEP Proficient Lang. Arts, 2003-2004
U.S. and States												
U.S. Total								37.8	18.4			
U.S. Mean	35.5	41.1	41.2	4.7	34.7	38.9	50.5	3.5			55.9	60.2
U.S. Median	36.4	40.3	39.1	4.1	33.6	38.8	47.0	3.1			55.7	58.2
Alabama	*	53.9	49.5	*	*	52.0	46.8	*	1	1	78.8	74.9
Alaska	41.1	38.5	54.9	-2.5	43.1	41.4	64.0	-1.7	0	0	85.9	96.2
Arizona	25.6	22.7	25.3	-2.9	25.8	23.7	38.0	-2.1	0	0	43.8	52.2
Arkansas	*	*	*	*	*	*	*	*	*	*	*	*
California	26.7	27.2	15.2	0.6	18.9	18.4	13.2	-0.5	1	1	55.7	49.5
Colorado	56.9	59.0	63.3	2.1	69.9	72.6	75.6	2.7	0	0	71.3	87.7
Connecticut	47.2	*	*	*	33.0	*	*	*	*	*	*	*
Delaware	39.3	51.4	33.0	12.2	38.2	49.7	57.0	11.5	1	0	78.8	82.4
District of Columbia	*	38.8	*	*	*	12.5	*	*	*	*	*	*
Florida	26.5	30.3	31.0	3.9	19.2	27.8	38.0	8.7	0	0	52.7	45.9
Georgia	46.0	64.4	60.0	18.4	46.0	58.5	69.3	12.5	1	0	*	*
Hawaii	4.8	7.7	10.0	2.9	6.9	13.8	30.0	6.9	0	0	15.7	36.3
Idaho	40.1	54.1	51.0	14.1	37.4	52.9	66.0	15.4	1	0	81.2	79.7
Illinois	43.2	44.4	37.0	1.2	33.7	28.4	37.0	-5.3	1	0	61.2	39.2
Indiana	45.1	53.5	57.1	8.4	41.6	50.5	58.8	8.9	0	0	*	*
Iowa	44.6	40.9	*	-3.7	38.7	34.6	*	-4.1	*	*	*	*
Kansas	33.0	40.7	50.6	7.6	50.4	48.3	56.4	-2.1	0	0	*	*
Kentucky	22.6	27.3	20.3	4.7	33.5	40.0	43.7	6.5	1	0	41.8	75.0
Louisiana	50.6	56.4	*	5.7	42.7	50.1	36.9	7.4	*	1	39.4	39.6
Maine	16.7	9.8	25.0	-6.9	24.6	16.0	96.7	-8.6	0	0	24.5	46.7
Maryland	29.0	31.5	34.6	2.5	29.5	27.7	45.9	-1.8	0	0	53.6	58.2
Massachusetts	19.3	16.7	*	-2.6	18.2	19.1	*	0.9	*	*	28.1	37.2
Michigan	39.7	61.3	39.1	21.6	35.8	53.6	36.1	17.8	1	1	76.4	71.4
Minnesota	38.3	35.2	*	-3.0	32.6	31.3	*	-1.3	*	*	63.6	66.1
Mississippi	66.4	74.4	47.0	7.9	68.7	64.7	55.7	-4.1	1	1	*	*
Missouri	18.8	22.4	9.3	3.6	12.8	16.4	19.4	3.6	1	0	33.1	28.8
Montana	29.3	35.6	*	6.3	25.5	26.7	*	1.2	*	*	*	*
Nebraska	42.3	58.4	61.7	16.1	43.9	53.5	63.0	9.7	0	0	*	*
Nevada	27.7	20.4	35.5	-7.2	22.4	19.3	45.3	-3.1	0	0	53.1	56.3
New Hampshire	34.6	39.5	63.6	4.8	26.0	23.6	60.6	-2.4	0	0	*	*
New Jersey	28.2	41.8	50.4	13.7	26.7	42.9	50.9	16.2	0	0	54.2	56.3
New Mexico	25.1	28.8	37.2	3.8	24.4	29.2	40.0	4.8	0	0	*	*
New York	*	45.2	*	*	*	*	*	*	*	*	*	*
North Carolina	63.2	75.4	73.7	12.2	46.2	57.6	68.4	11.4	1	0	93.1	88.5
North Dakota	23.9	33.3	39.1	9.5	33.3	45.4	60.9	12.0	0	0	*	*
Ohio	44.7	49.9	39.6	5.2	47.2	43.7	45.7	-3.4	1	0	68.2	73.7
Oklahoma	*	47.8	*	*	*	35.9	*	*	*	*	*	*
Oregon	*	27.3	39.0	*	43.2	37.6	40.0	-5.6	0	0	*	*
Pennsylvania	25.0	30.2	35.0	5.3	17.1	21.2	45.0	4.1	0	0	*	*
Rhode Island	10.2	17.0	*	6.9	15.7	24.1	*	8.4	*	*	26.3	40.9
South Carolina	25.3	18.0	18.3	-7.3	20.7	18.5	19.6	-2.2	0	0	39.5	40.4
South Dakota	14.6	25.0	45.8	10.4	33.6	34.0	63.9	0.3	0	0	41.8	51.6
Tennessee	52.5	58.4	71.3	5.9	41.4	52.1	77.8	10.7	0	0	*	*
Texas	62.9	62.5	33.4	-0.4	58.8	60.2	46.8	1.4	1	1	76.0	79.3
Utah	46.6	49.8	55.5	3.2	48.7	45.4	64.9	-3.3	0	0	1.9	2.3
Vermont	51.0	54.8	*	3.8	55.3	50.4	*	-4.9	*	*	84.8	76.4
Virginia	67.6	70.5	59.0	2.9	54.7	61.2	61.0	6.5	1	1	*	*
Washington	16.5	20.7	26.9	4.1	20.3	28.6	47.2	8.3	0	0	64.7	74.3
West Virginia	*	80.3	*	*	*	83.1	*	*	*	*	82.7	88.0
Wisconsin	38.7	40.3	*	1.7	37.0	41.7	*	4.7	*	*	61.3	69.7
Wyoming	12.4	19.2	28.0	6.8	20.2	29.1	33.8	8.9	0	0	*	*

* State reported data not available.

Source: Biennial Evaluation Report to Congress on the Implementation of Title III, 2005.

Appendix 4
Title III: Achievement of LEP and Formerly LEP Students in U.S.

U.S. and States	LEP Title III, 2003-2004	% LEP of PK-12 Student Enrollment, 2002-2003	Table 2.2a (Title III)		Table 2.2b (Title III)		Table 3.1 (# meeting/# subgrante es)
			Target % LEP Students Making Progress in English, by Cohort, 2003- 2004	Perform. % LEP Students Making Progress in English, by Cohort, 2003- 2004	Target % LEP Students Attaining English Proficiency, by Cohort, 2003-2004	Perform. % LEP Students Attaining English Proficiency, by Cohort, 2003- 2004	
U.S. Total	4,017,504	8.3					
U.S. Mean	78,775	5.7	58.1	61.9	18.4	26.7	55.4
U.S. Median	21,839	4.2	60.0	60.0	12.8	22.9	65.5
Alabama	11,815	1.6	50.0	56.0	42.0	47.0	78.6
Alaska	15,588	11.6	75.0	45.7	14.5	25.5	0.0
Arizona	161,213	17.2	*	*	*	*	41.4
Arkansas	13,533	3.0	60.0	100.0	*	*	100.0
California	1,554,172	24.5	51.0	61.0	30.0	38.0	81.2
Colorado	91,751	12.2	25.0	32.8	25.0	55.7	76.1
Connecticut	24,840	4.4	48.0	65.6	12.0	15.9	67.4
Delaware	3,629	3.1	80.0	85.9	5.0	5.6	73.7
District of Columbia	5,015	6.6	72.2	59.7	18.2	24.0	0.0
Florida	206,660	8.1	*	*	5.0	51.2	*
Georgia	66,695	4.5	60.0	100.0	25.0	27.0	100.0
Hawaii	15,750	8.6	75.0	24.0	5.0	23.0	100.0
Idaho	17,171	6.9	69.0	55.7	9.0	8.2	5.9
Illinois	149,589	7.2	85.0	87.0	25.5	32.0	44.8
Indiana	19,447	1.9	9.8	25.0	4.6	7.0	69.8
Iowa	14,571	3.0	90.0	*	20.0	18.9	*
Kansas	21,839	4.6	17.7	60.0	12.7	40.0	39.4
Kentucky	10,471	1.6	*	*	*	*	*
Louisiana	8,376	1.1	74.6	59.6	25.4	28.7	100.0
Maine	2,251	1.1	80.0	85.9	6.0	15.3	77.8
Maryland	27,849	3.2	72.2	81.7	18.2	19.7	100.0
Massachusetts	48,758	5.0	70.0	33.0	29.0	21.0	*
Michigan	61,941	3.5	95.0	99.0	19.0	27.4	100.0
Minnesota	50,158	5.9	79.0	81.0	2.9	4.6	*
Mississippi	3,698	0.8	*	*	*	35.4	*
Missouri	13,121	1.4	75.0	35.0	12.0	17.0	0.0
Montana	2,425	1.6	*	*	*	*	*
Nebraska	13,734	4.8	29.0	56.0	13.0	47.8	*
Nevada	85,521	23.1	80.0	84.0	10.0	19.0	20.0
New Hampshire	2,570	1.2	67.5	76.0	19.0	20.0	93.5
New Jersey	35,646	2.6	50.0	60.0	50.0	91.0	67.3
New Mexico	61,973	19.4	22.7	49.0	10.0	22.0	16.0
New York	107,293	3.7	50.0	71.2	5.0	8.8	*
North Carolina	69,888	5.2	40.0	75.8	20.0	50.3	73.3
North Dakota	2,503	2.4	59.6	93.0	6.9	9.3	*
Ohio	26,234	1.4	50.0	*	0.0	65.7	*
Oklahoma	33,762	5.4	40.0	59.3	10.0	21.2	51.7
Oregon	55,840	10.1	70.0	19.8	9.0	7.0	10.5
Pennsylvania	41,606	2.3	54.5	69.7	45.5	30.3	*
Rhode Island	6,711	4.2	60.0	59.1	60.0	22.7	63.6
South Carolina	9,573	1.4	50.0	85.1	0.5	15.2	82.1
South Dakota	1,740	1.4	75.0	51.0	20.0	15.0	0.0
Tennessee	14,720	1.6	30.0	38.2	13.0	11.3	61.8
Texas	604,721	14.2	47.3	53.9	2.0	32.5	*
Utah	49,513	10.1	75.0	59.9	8.6	31.4	26.8
Vermont	862	0.9	86.6	60.8	31.2	7.8	0.0
Virginia	57,473	4.9	20.0	46.0	10.0	20.0	33.3
Washington	63,868	6.3	62.0	73.5	25.0	33.0	37.9
West Virginia	874	0.3	10.0	23.3	10.0	25.5	100.0
Wisconsin	45,907	5.2	90.0	*	90.0	*	*
Wyoming	2,646	3.0	39.3	*	11.7	34.0	*

* State reported data not available.

Source: Biennial Evaluation Report to Congress on the Implementation of Title III, 2005.

Glossary of Terms

AIMS Arizona Instrument to Measure Standards.

State achievement test that Arizona students must take to demonstrate their command of the state curriculum.

AMAO Annual Measurable Achievement Objectives.

This usually refers to Title III objectives for limited English proficient students. These objectives include 1) limited English proficient (LEP) students or a cohort of LEP students must make *progress* in learning English, 2) LEP students or a cohort of LEP students must show progress in the percentage reclassified fluent English proficient, and 3) LEP students must meet Title I Adequate Yearly Progress. The first two objectives are measured by a test designed specifically for English language learners and the state can use cohorts rather than the entire group. The second is measured by scores on the state achievement test, as well as participation rates and attendance or graduation rates for the LEP group as a whole.

AYP Adequate Yearly Progress.

This is the standard for Title I. It includes achievement on the state achievement test at the proficient level, a 95 percent participation rate on that test, and attendance (elementary) or graduation (high school) rates. AYP is a single standard set by the states who establish a single starting point for the percent proficient on the state achievement tests and annual increases in that percentage to be met each year by schools and sub-groups until they reach 100 percent at the proficient level on the state achievement tests no later than 2013-2014.

BINL Basic Inventory of Natural Language.

This is an English language proficiency test, widely used throughout the U.S., and administered to students who have been identified by a home language survey as coming from a home where the primary language is other than English. It is used for the initial identification of a student as limited English proficient and for redesignation as fluent English proficient.

BSM Bilingual Syntax Measure.

This is an English language proficiency test, widely used throughout the U.S., and administered to students who have been identified by a home language survey as coming from a home where the primary language is other than English. It is used for the initial identification of a student as limited English proficient and for redesignation as fluent English proficient.

CAHSEE California High School Exit Examination.

This is a separate exam that high school students in California must take. Beginning with the Class of 2006, all public high school students will be required to pass the exam to earn a high school diploma.

CAPA California Alternate Performance Assessment.

Exam for students with disabilities who are unable to take the state achievement tests (CST and CAT/6).

CAT/6 California Achievement Test, Sixth Edition.

A norm-referenced test, administered by districts to students in grades 2-11 as part of the state's Standardized Testing and Reporting (STAR) data system

CDE California Department of Education.

CELDT California English Language Development Test.

Test developed by California and originally based on the LAS (a nationally used English proficiency test). The CELDT is now supposed to be aligned with the state's English Development Standards.

CELLA Comprehensive English Language Learner's Assessment.

This is an English language proficiency test for LEP students being developed by a consortium of states (Florida, Pennsylvania, Michigan, Tennessee, and Maryland) and two organizations (ETS and Accountability Works) to be implemented in Spring 2006.

CST California Standards Test.

This is a series of criterion referenced tests intended to be aligned with the state curriculum. It includes English language arts and mathematics in grades 2-11 (to be changed to include K and 1 sometime in the future), writing composition in grades 4 and 7, history and social science in grades 8, 10, 11, science in grades 5 and 9-11.

ELA English Language Arts.

ELA may refer to the English language arts portion of the state achievement tests or the English language arts curriculum standards for a state.

ELD English Language Development.

These standards were developed for LEP students in California and are aligned with the state English language arts curriculum standards for all students.

ELL English Language Learner.

A student who is limited in English as determined by an English proficiency test designed to be administered to students who have been identified by a home language survey as coming from a home where the primary language is other than English.

EPAS English Proficiency for All Students Consortium.

A consortium of five states (Florida, Pennsylvania, Michigan, Tennessee, and Maryland) and two organizations (ETS and Accountability Works) that are collaborating on developing a single English proficiency test, CELLA, the Comprehensive English Language Learner's Assessment

ESL English as a Second Language.

An instructional supplement to the education of LEP students who are in mainstream classrooms. It involves a small group setting, usually in another room, in which a teacher trained in ESL instructional techniques teaches English grammar and vocabulary (and sometimes other subjects) to children who are learning English.

ESOL English for Speakers of Other Languages.

This is ESL instruction by another name. It is used by some organizations and districts to convey the idea that English might be a third or fourth language for some students.

FCAT Florida Comprehensive Assessment Test.

This is the state achievement test that students in Florida must take to demonstrate their command of the state curriculum standards. The goal is 100 percent at the proficient level.

FEP Fluent English Proficient.

This usually refers to a student who has taken an English language proficiency test designed for students who come from a home where a language other than English is spoken and who has been deemed to not be LEP. Occasionally, the term is used to describe all students who are not limited English proficient, including those who never took a test because they come from a home where English is exclusively spoken.

HLS Home Language Survey.

Short survey that all entering students in a U.S. school district must fill out as part of the registration process. The survey asks questions about the languages spoken in the home. If a language other than English is spoken, the student is then administered an English language proficiency test to determine if they are limited English proficient.

IAA Illinois Alternate Assessment.

Alternate assessment test used in Illinois for students with disabilities who because of them cannot take the Illinois Standards Achievement Test (ISAT) to demonstrate their command of the state curriculum.

IEP Individual Educational Plan.

Quasi-contractual agreement to guide and document especially designed instruction for each student with a disability in the least restrictive environment appropriate to their individual needs. It is used in all public schools in the U.S. and is required by the Individuals with Disabilities Act (IDEA) of 1975.

IMAGE Illinois Measure of Annual Growth in English.

An alternative form of the state achievement test (ISAT) designed for LEP students who have been in a transitional bilingual program (TBE) or transitional program of instruction (TPI) for no more than three years and on a case basis for two more years, for a total of five. It tests both reading and math.

IPT IDEA Proficiency Test.

This is an English language proficiency test, widely used throughout the U.S., and administered to students who have been identified by a home language survey as coming from a home where the primary language is other than English. It is used for the initial identification of a student as limited English proficient and for redesignation as fluent English proficient.

ISAT Illinois Standards Achievement Test.

State achievement test that students in Illinois must take to demonstrate their command of the state curriculum standards. The goal is 100 percent at the proficient level.

LAB Language Assessment Battery.

An English language proficiency test developed by New York City in the 1970s and administered to students in the city and several other school districts in the state who have been identified by a home language survey as coming from a home where the primary language is other than English. It is used for the initial identification of a student as limited English proficient and for redesignation as fluent English proficient. The test has been revised as the LAB-R and is now used throughout the state for initial identification of LEP students.

LAS Language Assessment Scales.

An English language proficiency test, widely used throughout the U.S., and administered to students who have been identified as coming from a home where the primary language is other than English. It is used for the initial identification of a student as limited English proficient and for redesignation as fluent English proficient.

LEA Local Educational Agency.

This is a local board of education within a state that governs public schools within its boundaries. The most common LEA is a school district which includes one or more schools and has specific boundaries that are often, but not always coterminous with cities, towns or counties. Less common LEAs are County Boards of Education that govern special schools such as alternative schools and youth camps, prevalent in California. In some states and in some circumstances, charter schools are considered LEAs.

LEP Limited English Proficient.

A student who comes from a family that speaks a language other than English who has been designated limited English proficient by a score on a test specifically designed to measure this. In some instances, the test is supplemented by other input such as teachers and committees or other norm referenced or criterion referenced tests.

LF Language Fluent.

This is the acronym used in Florida to describe a formerly LEP student who has become fluent in English.

LPAC Language Proficiency Assessment Committee.

A committee of educators in a school (in some cases this includes the parent) who monitor the progress of LEP students and make decisions about designation, test accommodations, and redesignation of LEP students. A committee such as this is common in schools that have large LEP populations, although it may go by a different name. In Texas, for example, it is called an LPAC and in Florida it is called an LEP committee.

LPTS Language Proficiency Test Series.

This is an English language proficiency test, widely used throughout the U.S., and administered to students who have been identified as coming from a home where the primary language is other than English. It is used for the initial identification of a student as limited English proficient and for redesignation as fluent English proficient.

MAC II Maculaitis II.

This is an English language proficiency test, widely used throughout the U.S., and administered to students who have been identified as coming from a home where the primary language is other than English. It is used for the initial identification of a student as limited English proficient and for redesignation as fluent English proficient.

MCAS Massachusetts Comprehensive Assessment System.

State achievement test that students in Massachusetts must take to demonstrate their command of the state curriculum standards. The goal is 100 percent at the proficient level. Students must also pass this exam to graduate from high school.

MDOE Massachusetts State Department of Education.**MEPA Massachusetts English Proficiency Assessment.**

This is the new statewide English proficiency testing system that must be administered annually in the Spring to all LEP students in grades 3-12 and in the Fall to entering students who come from a home where a language other than English is spoken. Students in grades 3-12 take the MEPA R/W in reading and writing and students in grades K-12 take the MELA-O, an oral English proficiency test.

NAEP National Assessment of Educational Progress.

This is a national test begun in 1969 and administered to a sample of 4th, 8th, and 12th graders conducted periodically in reading, mathematics, science, writing, U.S. history, civics, geography, and the arts. Since 1990, NAEP assessments have also been conducted to give results for participating states. As of 2002-2003, all states are required to participate biennially in 4th and 8th grade NAEP reading and mathematics tests as a condition of NCLB funding.

NCLB The No Child Left Behind Act of 2001.**NYSESLAT New York State ESL Achievement Test.**

This is an English language proficiency test for LEP students administered on a statewide basis beginning in May 2003 to annually measure achievement in English proficiency and to determine whether a student should be redesignated FEP

PSAE Prairie State Achievement Examination.

The PSAE measures 11th grade student mastery of the Illinois Learning Standards in reading, writing, mathematics, science and social science.

RPTE Reading Proficiency Tests in English.

Tests designed to measure annual growth in the English reading proficiency of second language learners in grades 3-12.

SBE State Board of Education.**SDAA State Developed Alternative Assessment.**

Texas exam for students with disabilities who are unable to take the state achievement tests (TAKS).

SEA State Education Agency.

This is the state educational policymaking unit. It is more commonly called the State Department of Education or State Board of Education.

SELP Stanford English Language Proficiency.

The single, statewide English language proficiency test administered in Arizona beginning in 2004-2005.

SWD Students With Disabilities.

One of the sub-groups referred to in NCLB that has to have 100 percent of its members at the proficient level on the state achievement test.

TAAS Texas Assessment of Academic Skills.

This was the high school graduation test in Texas prior to 2002-2003 when it was replaced by the TAKS.

TAKS Texas Assessment of Knowledge and Skills.

First administered in 2002-2003, the TAKS measures the statewide curriculum in reading, writing, English language arts, mathematics, science, and social studies and is administered in Spanish in grades 3-6. It is also the high school exit exam.

TEKS Texas Essential Knowledge and Skills.

State English language standards for all students.

TELPAS Texas English Language Proficiency Assessment System.

This system annually assesses the English language proficiency of LEP students with the RPTE and the TOP.

TOP Texas Observation Protocols.

Part of the TELPAS. In grades K-2, the test includes listening, speaking, writing, and reading, and in grades 3-12, it only includes listening, speaking, and writing since in those grades, students have their reading assessed by the RPTE.

WIDA World-class Instructional Design and Assessment.

Consortium of 10 states (Wisconsin, Delaware, Arkansas, the District of Columbia, Maine, New Hampshire, Rhode Island, Vermont, Illinois, and Alabama) who are developing standards and an English language proficiency test for LEP students.

WLPBR Woodcock Language Proficiency Battery – Revised.

This is an English language proficiency test, widely used throughout the U.S., and administered to students who have been identified as coming from a home where the primary language is other than English. It is used for the initial identification of a student as limited English proficient and for redesignation as fluent English proficient.

WMLS Woodcock-Munoz Language Survey.

This is an English language proficiency test, widely used throughout the U.S., and administered to students who have been identified as coming from a home where the primary language is other than English. It is used for the initial identification of a student as limited English proficient and for redesignation as fluent English proficient.

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