

Florida ESSA Draft State Plan and Waiver Request

Public Comment July 30, 2017

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* Stakeholder Group Represented: (Please select an option below.)

Other (please specify)

Civil Rights Organization

* Organization: (If no organization, type self or none.)

* County: State wide organization

10. Waiver Request Document

LULAC Florida appreciates the opportunity to provide feedback on the state's draft ESSA waiver request and plan.

We recommend that the Florida Department of Education (FDOE) withdraw its request for waivers of ESSA requirements 1, 3, and 5 as stated on page 2 of the draft waiver request document.

1. Report subgroup performance on the components of the school accountability system but base the calculation and grade on all students.
3. Use the English language arts assessment to measure English Language Learners' (ELL) progress and do not add an English language proficiency on the English language acquisition test (ACCESS for ELLs 2.0) measure to the school accountability calculation.
5. Waive the requirements surrounding providing native language assessments.

Overall state rationale for waiver requests

An important part of the work of the Florida Department of Education (FDOE) is to highlight the accomplishments of students and teachers. For example, the opening segment of each State Board of Education meeting is devoted to this task. This type of public information is necessary to counterbalance rhetoric that exaggerates real problems unfairly to characterize public schools as failure factories. But repeated celebrations can blind ESSA plan drafters to reality. The state justification of its requests for waivers is that its current system is so effective that changes should not be required. The purpose of the following comments is to persuade plan drafters that this argument won't float.

Results on the state's English language arts (ELA) assessment for the past 17 years are presented in the draft waiver request document as evidence of a proven record of accomplishment. However, the data do not match the conclusion. While Florida educators deserve great credit for progress in the transition to more challenging state standards, our current status is far from exemplary. In 2016-17, slightly more than half (54%) of Florida students achieved at expected levels on the ELA/Reading assessment while almost half of Florida's students (46%) did not meet expectations. The data and trajectories presented on pages 56 and 57 of the draft plan add weight to the judgement that Florida accountability policy has not achieved the purposes of ESSA. The goals of increased student achievement for all students and for each subgroup and narrowed achievement gaps remain elusive under the terms of the waiver requests.

Conclusions about the status of education in Florida that are much less enthusiastic than those expressed in the waiver request are plentiful and well known. Alarm about Florida education was expressed as recently as this past week by the *Washington Post's* Varerie Strauss, who described Florida education as a system in chaos. Among her concerns are Florida's ESSA waiver requests, as first reported by *Education Week on July 20, 2017*. Florida, she said, "no longer wants to judge schools on whether they are closing achievement gaps between different groups of students, or on how well English language learners do on English proficiency tests." Her column was redistributed today by the *Tampa Bay Times* and earlier this week by *Progress Florida Daily News*.

On July 22, 2017, the League of Women Voters posted on its Education Blog a review of a CNBC report titled "America's Top States for Business". Florida ranked in **40th** place on education in that report. To identify the most and least educated cities in America, WalletHub's analysts compared the 150 most populated U.S. metropolitan statistical areas (MSAs) across two key dimensions, including "Educational Attainment" and "Quality of Education & Attainment Gap." The report, "2017's Most & Least Educated Cities in America", ranked Florida cities from 10th to 140th out of 150 MSAs. One Florida MSA ranked in the top third, seven in the middle third, and **six in the bottom third** of the national distribution.

At this year's convention, LULAC National adopted a resolution of opposition to lowering the definition of proficiency on the English Language Proficiency test for exit qualification purposes from ESOL programs, an action taken by the Florida Board of Education in April of this year.

On *Education Week's* QUALITY COUNTS 2017 report, Florida earned a State Report Card grade of C, with a rank of **29th** in the nation.

In 2016, The Education Law Center compared equity in school funding for all 50 states. In its report, "Is School Funding Fair? America's Most Fiscally Disadvantaged School Districts", Florida ranked **42nd** for education funding per student.

That same year, the Southern Poverty Law Center (SPLC) filed a federal lawsuit filed on behalf of Immigrant children who have been barred from enrolling in high school in a Florida school district. Exclusion of English learner students from public school violates federal law, which requires that school districts provide them with equal access to educational opportunities and also violates Florida law, which bans discrimination against English learners. The situation also calls into question the efficacy of FDOE monitoring processes. The case is making its way through court.

In *Citizens for Strong Schools, Inc. and Fund Education Now v. Fla. State Bd. of Education*, Southern Legal Counsel plaintiffs allege that the State is breaching its constitutional duty to provide a uniform, efficient, safe, secure and high quality system of free public schools that allows students to obtain a high quality education, as required by Article IX, Section 1(a) of the Florida Constitution. Plaintiffs introduced evidence from across the state that school districts do not have sufficient funding to provide the conditions for a high quality education for all students, with emphasis on children of all races, from low income backgrounds, with disabilities, those experiencing homelessness and English Language Learners. Plaintiffs contend that the public education system in Florida is failing more than a million students.

The Miami Herald summarized the arguments heard by the First District Court of Appeal this month. *PoliticoFlorida* reported on the discussion about homeless students, whose academic performance has worsened compared with their peers in other states, according to research the advocates submitted to the appellate court. “These life circumstances and trauma experienced by homeless children shape their ability to learn and behave at school ... **resulting in an astonishing 75 [percent] dropout rate,**” the brief said.

The three-judge federal panel in this case wanted to know what measure can be used to define a quality education, and what specific ways Florida might be failing its children. In response, a *Tampa Bay Times* editorial points out that the SAT has been the gold standard for college preparedness for decades.

In Florida, 74 percent of high school students took the SAT, according to the most recent results. That puts Florida in a pool of 16 similar states that had a 60 percent to 80 percent participation rate. And how does Florida compare? It was **15th out of those 16 states** in average SAT scores. So when compared nationally, Florida does a poor job preparing students for graduation.

As to the court's second question regarding specific ways the state might be failing students, that also can be measured by using national averages. According to a 2016 *Miami Herald* article, when per-pupil spending is adjusted based on the cost of living for each state, Florida ranked **41st in the nation** on the amount of money devoted to public education. Once again, a poor national showing.

The conclusions of this July 28, 2017 editorial from Florida's largest newspaper and leading news website are that Florida schools are underfunded, their students do not measure up particularly well to their national counterparts, and Florida is falling short of its constitutional responsibility to provide a "high quality" education.

Summary and Recommendation

The point of these comments is not to assert that education in Florida is uniformly terrible or to deny that some real progress has been achieved. They are offered merely to emphasize that state and national attention to concerns about Florida's education status and to its draft ESSA plans contradict the state's assertion that "Florida's requests for waivers should be viewed favorably because of its proven track record of innovation, accountability, and continuous improvement." Instead, each waiver request should be considered on its own merits and in light of the plain meaning of the law. The federal reviewers of the plan will not be encumbered by a halo effect; Florida plan drafters shouldn't be either.

Valerie Straus raised two questions in her widely read column: Will Secretary DeVos agree to Florida's waiver requests? And if she does, will Congress agree that she is properly interpreting ESSA?

As reported by *Education Week*, Secretary DeVos recently stated her department is "looking forward to reviewing and ultimately approving every [ESSA] plan that meets the law. "

Recommendation

LULAC Florida recommends withdrawal of Florida's draft waiver requests 1, 3, and 5, and associated revision of the state draft ESSA plan. These actions will eliminate major policy obstacles to implementation of ESSA in Florida as Congress intended and help safeguard the civil rights legacy of the law.

The rest of this statement presents the rationale for our recommendation.

Subgroup Accountability

Florida Waiver Request 1. Report subgroup performance on the components of the school accountability system but base the calculation and grade on all students

Federal statutory requirements to be waived

Florida is seeking a waiver from ESEA section 1111(c)(4)(B) and (C) to calculate the components of the accountability system based on all students and to report on the performance of each subgroup separately for each component (See Appendix C in the state Plan).

Florida plans to focus on the lowest performing 25% of students, a type of super subgroup, instead of on each subgroup. According to ESSA, each subgroup of students must be considered separately for accountability. The state, if it chooses, could use the super subgroup in addition to required subgroup accountability but not instead of the required procedure.

Combining subgroups into a larger mixed group can mask group variations in performance, lead to erroneous conclusions about the types of interventions that are needed, deny diagnostic information to educators, result in skewed priorities in targeting services to students, and bring about use of inaccurate metrics in assigning school report card grades.

According to data presented on page 3 of the waiver request document, Economically Disadvantaged students comprise 56% of 75% of All Students. These are among the students who would be left out under the proposed plan to prioritize the lowest performing 25%. The performance of this large group of students would receive scant consideration if the state's waiver request were granted.

What the research says

Relevant research findings support our recommendation for withdrawal of the waiver request. In July 2017, the Brookings Institution distributed a Florida study on the relationships between socioeconomic status and student outcomes. The investigators, David Figlio and Krzysztof Karbonwnik, analyzed data from 568 schools. Their conclusion:

The pattern of differences across schools, across and within school districts, argues for enacting school accountability policies that hold schools accountable for the success of specific populations, rather than concentrating solely on overall schoolwide performance levels or gains. (Figlio and Karbownik, July 20, 2017)

The takeaway from this research report is that school proficiency ratings should include both school-wide results and results for each subgroup.

Clarification needed

Additional information is needed to make clear how many schools do not have enough students for each subgroup's performance to count in the accountability system. The undated information presented on pages three and four of the ESSA waiver request document does not answer that question. It's not possible to compare that data with the percent of students "left out" presented on page 2. The Cell size used in the analysis is not specified. Were the conclusions based on the cell size of 10 proposed in the draft plan or on a larger cell size used in previous years? Were the results of the cell size analysis calculated by grade or by school?

Will the 95% participation rates be monitored to ensure there is no subgroup overrepresentation among the non-participants? What will the consequences or methods of data correction be in instances of such overrepresentation?

We were unable to find assurance that the optional lowest 25% of the students is a group that includes all of the required lowest 5% of Title I schools to receive comprehensive assistance.

Reality check

Public education is a complex undertaking. Therefore, complexity is inherent in any accountability system that accurately reflects reality. Simplicity clarifies only when it does not create distortions of the data that in turn would disadvantage groups of students.

Congressional Intent

The state is concerned that students belonging to more subgroups would be weighted more heavily in the accountability calculation, resulting in more focus from educators. Yet this is precisely the intent of the Congress, to focus attention on historically underserved groups.

ESSA give states flexibility to be innovative in return for continued protection of vulnerable students. Yet nothing is identified as new or impactful in the state's waiver request document. It appears the state is foregoing flexibility for innovation and also declines to attend to the needs of the historically underserved. This switch goes directly counter to the bipartisan bargain struck by the Congress and included in the law.

Support

In ESSA, subgroup accountability is the mechanism for delivery of targeted assistance. Comprehensive assistance is directed to the lowest performing 5% of Title I schools. In contrast, In the state's plan, targeted assistance is available to D rated schools. Comprehensive assistance is available to schools rated F or to those rated as D schools two years in a row. In neither case is there evidence to show that the state's plan will serve all

students entitled to support under ESSA's terms. There is no assurance that adequate resources are available to provide even low-impact tiered assistance and no documentation to support a conclusion that FDOE staffing levels are adequate to manage the support processes.

The proposed assistance is described on page 5 under the rubric of tiered assistance. This support is evidently a continuation of prior practice that would likely lead to continuation of past results, such as those reported on page 2 of the waiver request document (roughly half the students meet expectations on the English language arts assessment and half don't).

ESSA mandate

LULAC Florida supports ESSA requirements to provide help to any subgroup that is struggling in any school, not just to the very lowest performing groups or groups in a limited number of schools.

Waiver requests affecting English Language Learners (ELLs)

(ESSA uses the term “English Learners “ (ELs) to refer to the same group.)

To ensure effective implementation of ESSA, state plans must be grounded in the best available research evidence. Excerpts from summaries of studies on EL education policy related to the waiver requests are presented in the following sections. We relied heavily on the research based summaries of recommendations on state and federal law prepared by the Working Group on ELL Policy.

The Working Group on ELL Policy consists of researchers with extensive experience in educating English Learners (ELs) and a substantial understanding of the research on strategies for effectively educating this population. The group brings the combined knowledge of several leading universities and educational research organizations across the United States (see <http://ellpolicy.org/about/>). The prestigious members of the group include:

- Diane August, American Institutes for Research (co-convener)
- Steve Barnett, National Institute for Early Education Research
- Donna Christian, Center for Applied Linguistics
- Michael Fix, Migration Policy Institute
- Ellen Frede, Bill & Melinda Gates Foundation
- David Francis, University of Houston
- Patricia Gándara, University of California, Los Angeles
- Eugene Garcia, Arizona State University
- Claude Goldenberg, Stanford University
- Kris Gutiérrez, University of California, Los Angeles
- Kenji Hakuta, Stanford University (co-convener)
- Megan Hopkins, University of California, San Diego

- Robert Linqanti, WestEd (co-convener)
- Jennifer O’Day, American Institutes for Research (co-convener)
- Charlene Rivera, George Washington University Center for Equity and Excellence in Education
- Joseph Robinson-Cimpian, New York University
- Karen Thompson, Oregon State University
- Ilana Umansky, University of Oregon

As part of LULAC Florida’s feedback on last year’s draft state ESSA plan, we summarized the ELL recommendations of the Task Force on Inclusion and Accountability established in 2012 by authority of the State Board of Education. We also summarized the extensive support for implementation of those recommendations provided at every state forum that included EL issues in various cities over the past five years by parents, administrators, Asian, African-American, Haitian, and Hispanic ethnic advocacy groups; civil rights organizations, civic organizations, organizations of educators expert in serving English Language Learners, unions, associations of education advocates, and Federal, state, and local elected officials (who sponsored city and county commission resolutions in support of implementation adopted in a dozen jurisdictions across four Florida counties).

The Task Force included practitioners, administrators, university faculty, parents, and members of civil rights organizations. LULAC’s representative to the Task Force, Dr. Ester de Jong, is a faculty member at the University of Florida, the immediate past president of Sunshine State TESOL, and the current president of TESOL International. In this 2017 statement, we continue to advocate for the implementation of the Task Force recommendations. Research findings and conclusions that are consistent with recommendations of the Florida Task Force are identified as such.

English Language Proficiency (ELP)

Florida Waiver Request 3. Use the English language arts assessment to measure English language learners’ progress and do not add an English language proficiency [*sic*] on the English language acquisition test (ACCESS for ELLs 2.0) measure to the school accountability calculation.

Federal statutory requirements to be waived

Florida is seeking a waiver from ESEA section 1111(c)(4)(B) and section 1111(c)(4)(A)(ii) to use English language learners’ performance on the English language arts assessment instead of the English language proficiency assessment as part of Florida’s long term goals and not to include an English language proficiency indicator in the school grades calculation.

Adding English language proficiency as measured by the English language proficiency (ELP) test as an indicator in school grade calculations

There is no question regarding interpretation of ambiguous mandates related to this issue. The ESSA statement of this requirement to add English language proficiency assessment to

performance calculations of the accountability system is clear. It is the intent of the Congress that all students be included in the accountability systems of the states funded through this act, including English Learners. So that greater attention be paid to ensuring student progress in learning the English language, accountability for this function was moved from Title III to Title 1. Therefore, former Title III requirements for establishing Annual Measurable Achievement Objectives (AMAOs) are eliminated in ESAA. Without the incorporation of ELP results into school based state performance calculations, there would be no accountability at all for the critically important school obligation to foster English language acquisition, no opportunity to learn from successful strategies, or to discard those proven ineffective.

Florida's ELL population is among the largest in the country. We are also a state that revels in its status as a leader in education accountability. How shameful it would be if Florida were to shunt aside its responsibility for accountability to our large and growing population of ELL students, who comprise some 12% of our total enrollment.

English language arts assessment as a substitute for an English language proficiency test

Using an English language arts assessment instead of the English language proficiency assessment to measure progress in English language acquisition is a toxic tactic that would unfairly measure ELL students, their schools and teachers; result in invalid conclusions, and provide inaccurate diagnostic information for teaching purposes. The research and data tell us that this won't work.

There are monolingual native speakers of English who are proficient in the English language but who have not been able to pass the state's English language arts assessment. Therefore, common sense tells us that language proficiency is **DIFFERENT** from content area achievement in English language arts. Were the two tests interchangeable, ELs could qualify to earn a standard high school diploma by presenting passing scores on the ELP instead of on the ELA. I doubt that this alternative would have the support of the FDOE.

Two separate though related areas of knowledge require two separate assessment instruments to measure progress in accordance with ESSA requirements, the ELP for language proficiency and the ELA for language arts. Teachers of these **DIFFERENT** subjects (ESOL/Dual Language or English language arts) declared **DIFFERENT** majors in college, studied to meet **DIFFERENT** teaching standards, sat for **DIFFERENT** exams to establish eligibility for **DIFFERENT** teaching credentials issued by the FDOE, read **DIFFERENT** professional journals, and belong to **DIFFERENT** professional organizations.

English language arts assessments are not substitutes for English language proficiency tests.

Academic content assessments are neither designed nor intended to measure student's English language proficiency. They are simply not valid for making inferences about student's English language proficiency (Abedi, 2008). (Working Group, 2016; Linquanti and Cook, 2015).

Abedi (2002) has noted that when standardized tests are analyzed using ELL-only data, the tests often show lower degrees of reliability, which in turn makes them less valid, which in turn threatens score comparability. (Bowles, M. & Stansfield, C.W., January 2008)

The use of content assessments that are not reliable and do not yield valid inferences for ELLs undermines the accountability system and leads to inappropriate educational decisions for ELLs. Current law mandates that states use assessments for ELL students that are most likely to provide valid and reliable information about what students

know and can do. Yet many states use assessments and assessment practices that are neither designed for ELL students nor provide inferences of comparable reliability and validity for ELL and non-ELL students.

The state and the test maker must certify that the validity of the tests to be used for the assessment of ELLs' academic achievement are consistent with the APA/AERA/NCME Standards for Educational and Psychological Testing, a widely accepted standard of practice in the educational testing field. (Working Group, 2011)

Long term and interim goals, timelines, and tracking

The state's target, "to reduce by one-third the gap between ELLs and non-ELLs in each subject area, English language arts and mathematics" stated on page 9 of the Waiver Request Document, should be reconsidered in relation to the expert recommendations copied below. Since Florida has adopted a Seal of Biliteracy Program to support multilingual development, program level factors should not be ignored.

Set realistic interim goals, disaggregate accountability data, and differentiate instruction.

Consider student and program factors and empirical data on past performance of ELs in the state when setting long term and interim goals. Student factors include disability status, time in language instruction programs, grade, age, interrupted education, and home language proficiency. Also take into consideration the goals of the ESOL or dual language programs. Students in dual language programs take longer to demonstrate English language proficiency and achieve at expected levels on English language arts but ultimately reach these goals at higher rates than those in other programs for ELs. (Working Group, 2015, 2016; Florida Task Force, 2012).

Enhance the quality of educational programming to address the differentiated needs of ELLs. This includes recognizing and attending to the varying needs of newcomers, ELL students living in poverty, ELL students with interrupted formal education (SIFEs), long-term ELLs (LTELs), former ELLs, ELLs with disabilities, and gifted and talented ELLs. (Working Group, March 1, 2015; Florida Task Force, 2012)

Establish interim goals based on ELP level.

Content area performance expectations to which an ELL is held in a given year should be a function of their school grade level and either their expected level of English language proficiency, or their current level if higher. (Working Group, March 1, 2015; Florida Task Force, 2012)

Knowing an ELL's ELP level is essential to judging the validity of the inferences from assessments in the content areas. (<http://ell.stanford.edu/sites/default/files/pdf/academic-papers/07-Abedi%20Linquantitative%20Issues%20and%20Opportunities%20FINAL.pdf>)

Hold schools and districts accountable for ELLs' attainment of Title I content-area achievement expectations taking into account students' level of English language proficiency. (Working Group, 2011; Florida Task Force, 2012)

Establish long-term data tracking for Ever-ELLs.

Florida is a member of the WIDA Consortium. Performance at the state determined proficiency level on WIDA's ACCESS for ELLs 2.0, the state's English Language Proficiency (ELP) test, is the only required criterion for program exit for ELLs in the primary grades and one of the required qualifications for program exit for all the upper grades. The majority of our ELLs exit at the third grade based on their results on the ELP.

In 2016, WIDA engaged in a standard revision study so that the rigor of the ELP would match the increased academic and linguistic difficulty of current instruction under college and career ready standards. However, at the April 2017 meeting of the State Board of Education, Florida bypassed WIDA's work by lowering the definition of proficiency for exit qualifications.

The lower definition of proficiency on the ELP for exit qualification entails the risk of premature termination of language support services. That could cause academic failure and reduced life chances for Florida's quarter million ELLs, thereby denying rather than providing access to equal educational opportunities for this vulnerable group of students. There is no data on how exited ELLs fare after exit and through graduation or postsecondary study to support conclusions about what will happen under the new exit criteria or to guide efforts to prevent problems. Therefore, it is of the utmost importance for Florida to establish a new subgroup of students for monitoring purposes only who are or ever were ELLs and to track their progress for so long as they are enrolled in public education institutions, Pre-K through 16. Data for current and former ELLs should be disaggregated and reported separately.

Monitoring ELL and former ELL students throughout their school career is a valuable way to analyze the efficacy of ELL programs. However, nearly all states stop tracking the progress of former ELLs two years after they leave a language development program, as required by federal policy. This short-term tracking disadvantages states, districts and schools, as they lack a complete picture of their ELL and former ELL students' progress. Washington – an exception – has state policies directing the state superintendent to monitor former ELLs from reclassification until their K-12 career ends (see sidebar). (Wixom, Education Commission of the States, 2015).

Fully accounting for the ELL subgroup's academic progress and performance requires that group membership be stabilized, which in turn requires establishing a "total English learner subgroup" to increase fairness and accuracy in examining long-term outcomes. Once students are identified as ELL, they should be accounted for in this total ELL subgroup even after they have attained English proficiency and are no longer receiving English language development services. Failure to account for the ELL subgroup this way perpetuates the appearance of academic underperformance for those designated as ELLs because language proficiency is so strongly related to content performance on assessments in English. States should further disaggregate the academic performance of the total ELL group, separating out English-proficient learners from current ELLs, for reporting and LEA planning and instructional purposes.

Maintaining consistent subgroup designation will result in more accurate information about performance and progress of the subgroup, thus enhancing program evaluation

and improvement efforts. Continuing to monitor the progress of ELLs throughout their school careers recognizes the developmental nature of second language acquisition and will allow for better service delivery to students at all levels of English proficiency. Establishing a TEL subgroup will increase fairness and legitimacy of the accountability system. Accurate information is essential to a fair and legitimate accountability system. (LULAC, 2017; Working Group, March 1, 2015; Working Group, Jan. 14, 2011; Florida Task Force, 2012).

Native Language Assessment

Florida Waiver Request 5. Waive the requirements surrounding providing native language assessments

Federal statutory requirements to be waived

Florida requests a waiver of ESEA section 1111(b)(2)(F) and 34 CFR § 200.6(f)(2)(ii) and (f)(4).

The Official English amendment to the Florida Constitution provides no impediment to instruction or assessment in languages other than English.

When Senator Hayakawa introduced official English legislation in Congress in 1982, he stated, "Nothing I say in this amendment encouraging the use of an official language in the United States is intended to discourage the study of all languages around the world so we, in business and diplomacy, will be better represented around the world." <https://www.usenglish.org/official-english/not-only-english/>

Current versions of official English legislation pending in Congress, H.R. 997 and S.678, each specify that its provisions do not apply to teaching of languages.

In 2015, Florida legislators introduced bills to authorize accountability assessments in languages other than English.

The official English amendment to the state constitution has not interfered with the introduction of bills to authorize the use of native language assessments.

Senator David Simmons, an attorney, is chair of the Senate Appropriations Subcommittee on Pre-K- 12 Education. He has served in the legislature for 17 years. He sponsored Senate Bill 1524 to enable English learners who have met graduation requirements except for passing the state English language arts assessment to earn a standard high school diploma by presenting passing scores on an alternative native language assessment of college readiness. The bill directed the commissioner of education to identify (not translate) appropriate assessments and their respective passing scores.

Senator Jose Javier Rodriguez, an attorney, has served in the Florida legislature for five years. In 2015, he introduced House Bill 855 requiring the Department of Education to provide for the development and adoption (not translation) of state wide, standardized assessments in native languages for English learners for whom such tests are appropriate, beginning with the two most prevalent languages represented in Florida's EL student population.

Florida has a long history of instruction in languages.

The official English amendment to the state constitution has not interfered with instruction in Languages. According to FDOE data, over half a million Florida students enrolled in World Languages classes in 2015-16. In addition, several districts have extensive programs of language instruction at the elementary school level. Seven school districts adopted biliteracy seal programs, indicating the expansion of dual language programs across the state. The students in these programs are tested in English and in languages other than English. In 2016, the state legislature adopted a biliteracy seal program. The State Board of Education adopted rules recommended by the FDOE to implement this program that require the use of tests both in English and in languages other than English.

Why test in native languages?

The difficulty in distinguishing how much of an ESOL student's score on a content assessment reflects incomplete command of the language of the test and how much indicates knowledge of the subject makes accurate interpretation of results impossible. Without accurate interpretation of results it is also impossible to effectively and fairly target the accountability system's incentives and penalties or to benefit from its opportunities for insights for course placement or instructional purposes. Assessments in language other than English should be available for students literate in their home language but unable to demonstrate what they know and can do on English language tests.

The need for this accountability reform is urgent for recently arrived high school ELs. These students have only a few years to meet graduation requirements and to demonstrate their knowledge through a language they have not mastered. According to Florida Standards Assessments, English Language Arts and Mathematics (2016, p. 5), only 9% of English Language Learners, grades 9-10, scored at Level 3 on the ELA/FSA; only 3 % scored at Level 4. <http://www.fldoe.org/core/fileparse.php/5668/urlt/89FSA16.pdf>

In many cases, students fail the test, not because they don't know the content," said Jamal Abedi, a professor of education at the University of California, Davis. "It's because they don't know the language. (http://www.edweek.org/ew/articles/2015/01/05/fla-wins-flexibility-in-accountability-for-english-learners.html?utm_source=fb&utm_medium=rss&utm_campaign=mrss)

The use of primary language reading/language arts and mathematics assessments for students for whom they are appropriate would yield more valid and reliable information for educational decision-making and accountability (Working Group, 2016; Florida Task Force, 2012).

For ELLs, every test becomes (at least in part) a test of language proficiency. The *Standards for Educational and Psychological Testing* [Standards] indicate that any test that employs language is, at least in part, a measure of language skills (American Educational Research Association (AERA), American Psychological Association (APA), and National Council on Measurement in Education (NCME), (1999). Therefore, ELLs' "test results may not reflect accurately the qualities and competencies intended to be measured" (AERA et al., 1999, p. 91). Abedi (2002) has noted that when standardized tests are analyzed using ELL-only data, the tests often show lower degrees of reliability, which in turn makes them less valid, which in turn threatens score comparability. (Bowles, M. & Stansfield, C.W., January 2008)

Exclusive reliance on assessments solely in the English language is a disincentive for schools and districts to respond affirmatively to requests from parents for dual language programs. Administrators' fears of lowered school grades would be allayed, and more accuracy in results would result, from use of languages in addition to English in the accountability process.

Proficiency in two or more languages should be promoted for all students in the U.S., and accountability provisions should not undermine this goal. Multilingualism enhances cognitive and social growth, development of literacy in English, competitiveness in a global marketplace, national security, and understanding of diverse peoples and cultures. (Working Group, March 1, 2015)

Which states use assessments in languages other than English?

In recent years, a number of States have developed or provided content assessments in the native languages of ELs. For example, in the past, Washington state provided translated versions of math and science assessments for all grades in Chinese, Korean, Russian, Somali, Spanish, and Vietnamese; Michigan provided math and science assessments for all grades in Spanish and Arabic. In school year 2013-2014, 13 States offered reading/language arts, mathematics, or science assessments in languages other than English. Two consortia of States, the Partnership for Assessment of Readiness for College and Careers (PARCC) and the Smarter Balanced Assessment Consortium (Smarter Balanced), offered native language options during their first year of administration in school year 2014-2015. Twenty-one States, the District of Columbia, the U.S. Virgin Islands, and the Department of Defense Education Activity (DoDEA) are in one of these assessment consortia. Smarter Balanced offers a full "stacked" Spanish translation of its math assessments (i.e., the complete Spanish and English versions are both provided to the student), popup glossaries in the ten most common languages across the States in the consortium, and word-to-word dictionaries in other languages. PARCC provides a Spanish translation of its math assessments at the discretion of a State and offers translated directions and parent reports in the most common languages, with word-to-word dictionaries available for other languages. (U.S. Department of Education, April 6-8, 2016)

Among the 16 states with information about partner language proficiency assessment policies on their SEA website, five states (Delaware, Kentucky, New Mexico, Oregon, and Utah) require state-funded dual language programs to assess students' progress toward developing partner language proficiency at least annually. The remaining 11 states with such information on their websites do not require districts or dual language programs to implement a particular assessment, but they do recommend or provide access to partner language assessment tools.

In 2012-13, 10 states reported allowing ELs to take at least one content assessment in a language other than English for ESEA accountability purposes. Five states (California, Illinois, New York, Texas, and Wisconsin) have developed standards for language arts in the partner language to guide instruction and assessment. Two states (California and Texas) have developed Spanish language versions of state standards in content areas other than language arts. (Boyle, August, Tabaku, Cole, and Simpson-Baird, December 2015)

Engagement

LULAC Florida is confused about the FDOE's definition of meaningful engagement. As noted in the section on Waiver Requests Affecting English Language Learners in this feedback statement, stakeholders and the general public have manifested extensive support during the past five years for Florida task force recommendations directly related to and in support of the requirements the education department seeks permission to waive. That support includes several comments submitted in response to the state's request for feedback on the draft state ESSA plan last year. None of this input is referenced on page 12 of the ESAA waiver request document.

It is commendable that the Florida Commissioner convened a work group of Florida Superintendents to provide input on the development of the state plan. However, LULAC Florida is not aware of any similar state sponsored convocation of civil rights organizations or of organizations whose members have expertise or interest in the education of English learners . The input these groups provided in response to requests for feedback on last year's draft plan was ignored. Apparently, no effort was made in the preparation of the current plan and waiver requests to benefit from their collective expertise. This is all the more remarkable since the plan and waiver requests include many features that directly affect the students served by these stakeholder organizations.

We appreciate the opportunity to speak out on state policy and would be very pleased to see indicators that the state hears what parents, communities, educators from every role group, and stakeholder organizations have to say.

ELL Recommendations of the Florida Task Force on Inclusion and Accountability

At the July 30,2012 conference call meeting of the ELL Subcommittee of the TaskForce, Miami-Dade Superintendent and Task Force member Alberto Carvalho summarized the subcommittee's priority recommendations for inclusion in draft legislation. Available at Subcommittee on English Language Learners Conference Call - July 30, 2012, <http://data.fldoe.org/winmed/esea/ESE73012.wmv>

Summary of Key Recommendations from the ELL Subcommittee of the Task Force

1. Link English Language Proficiency (ELP) status to performance expectations by using weighted measures of performance on the FCAT and other content assessments in performance calculations.
2. Hold schools accountable for growth in English language proficiency by adding English Language Proficiency results to performance calculations, as recommended in the USDOE review process (see attached summary).
3. Use multiple outcome measures to ensure a comprehensive picture of ELL progress, such as closing achievement gaps (achievement, promotion, graduation), improving levels,

maintaining proficiency, cohort analysis, and permit home language content assessments as appropriate and feasible. Both NM and NY permit competency testing in home languages instead of in English, which the USDOE authorizes for three to five years. Home language assessment results could be included in performance calculations at 100% weight immediately.

4. Disaggregate ELL data by grade, ELP Level, mobility rate, school, district, and state. Add an additional category for tracking former ESOL students for as long as they are in Florida schools to get a full picture of their performance and of the effectiveness of ELL services.

5. Revise the date of entry to take into account Program (not school) Entry and Re-Entry dates, for accountability purposes.

6. Develop ways to include and follow the achievement of migrant students in state-wide and district-based accountability plans.

7. Identify and require research-based assessment accommodations appropriate for ELLs, including a paper and pencil alternative to computer testing.

8. Ensure appropriate resources for high quality instructional programs for ELLs, including resources, professional development, and teacher preparation. This is especially relevant to the timing of assessments based on the Common Core State Standards (CCSS). English Language Learners will not have had access to CCSS instruction prior to profession development for their teachers on the CCSS and revised English Language Proficiency Standards and assessments based on the CCSS.

The 73 page report on the Taskforce recommendations is available here <http://www.fldoe.org/accountability/accountability-reporting/eseaw.stml>

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