

# CRS Report for Congress

Received through the CRS Web

## **“Student Results Act” (H.R. 2) and “Educational Opportunities Act” (S. 2): Provisions for Limited-English Proficient Students**

Patricia Osorio-O’Dea  
Analyst in Social Legislation  
Domestic Social Policy Division

### **Summary**

On October 21, 1999, the House passed H.R. 2, the “Student Results Act.” This bill would amend several programs in the Elementary and Secondary Education Act, including programs for pupils with limited English language skills. H.R. 2 would replace the current Bilingual Education Act (BEA) with a consolidated program of grants to states for the education of limited-English proficient (LEP) students. Primary features of H.R. 2 related to LEP students include: a) use of a formula to distribute funds to the states (when appropriations for that fiscal year are at or above \$220,000,000), instead of discretionary grants; b) parental rights for notification and consent regarding placement of pupils in English language instruction programs would be expanded; c) a requirement that pupils who have been in the U.S. for at least 3 academic years would be assessed in English for reading and language arts. On April 12, 2000, the Senate Committee on Health, Education, Labor, and Pensions reported S. 2, the “Educational Opportunities Act”. S. 2 would consolidate the four BEA instructional grants into two competitive grant programs. The bill would give priority to applicants: experiencing dramatic increases in LEP students and that have limited or no experience in serving LEP children; serving districts with less than 10,000 students; demonstrating success in assisting LEP students learn English and achieve high standards; proposing programs to provide bilingual proficiency for all project participants; and serving districts with large LEP enrollments. Both bills would eliminate a current BEA requirement that no more than 25% of funding may go to special alternative instruction (non-bilingual) programs. This report will be updated as further legislative activities occur. For a more detailed description of current programs and issues related to the instruction LEP students, see: CRS Report 98-501, *Bilingual Education: An Overview*; and CRS Report RS20042, *The Federal Emergency Immigrant Education Program*.

## Introduction and Background

Recent immigrants and other students with limited English language skills receive English language and other instructional services through a variety of programs receiving federal assistance, as well as a number of state and local programs. While there is little debate over the need to provide some form of English language instruction to English language learners, in recent years there have been major disagreements over the specific instructional techniques used, particularly those which substantially utilize the student's native language (bilingual education) versus other instructional methods that make little or no use of the student's native language in English language instruction (e.g., "immersion", "English as a second language", or "sheltered English").<sup>1</sup> Debates have focused on the length of time that students should be receiving special English instructional services, and whether different methods of instruction are more effective in varying contexts (for example, situations in which a school enrolls students from the same non-English language background versus situations in which pupils have many different native languages).

Education for LEP students is increasingly important because the number of immigrants and other English language learners has been rising relatively rapidly. According to the U.S. Commission on Civil Rights, the total number of LEP students increased by 38% between the 1990-1991 and 1994-1995 school years.<sup>2</sup> Most recent figures indicate that there were approximately 3.45 million students with limited English skills enrolled in U.S. schools during the 1996-1997 school year.<sup>3</sup> Equally important are issues related to the implementation of the *Lau v. Nichols* decision, which requires states and LEAs to provide services to meet the special needs of English language learners.<sup>4</sup>

## Current Programs for LEP Students in ESEA

ESEA Title VII, Part A, the Bilingual Education Act (BEA) and Part C, the Emergency Immigrant Education Program (EIEP) are the only federal education programs targeted specifically to limited English proficient students and recent immigrant students. The BEA awards grants on a competitive basis in three general areas: instruction, support,

<sup>1</sup> Immersion programs are special instructional programs designed specifically for LEP students. For further description of the various instructional methods used in English language instruction see: CRS Report 98-501, *Bilingual Education: An Overview*, by Patricia Osorio-O'Dea. Please note that all of the instructional methods discussed in this report should be distinguished from programs that immediately place LEP students into mainstream classrooms.

<sup>2</sup> U.S. Commission for Civil Rights. *Equal Educational Opportunity and Nondiscrimination for Students with Limited English Proficiency: Federal Enforcement of Title VI and Lau v. Nichols*. November 1997. p. 22-23.

<sup>3</sup> This figure is a conservative estimate of the total enrollment of LEP students since only those states receiving Title VII bilingual education funding report data on LEP students. See: Macias, Reynaldo F., et al. *Summary Report of the Survey of the States' Limited English Proficient Students and Available Educational Programs and Services, 1996-1997*. Washington. National Clearinghouse for Bilingual Education. (Hereafter cited as Macias, *Summary Report*.)

<sup>4</sup> However, the Supreme Court did not specify which instructional techniques would be acceptable. See CRS Report 98-501, *Bilingual Education: An Overview*.

and professional development. Subpart 1 of the BEA provides four types of grants for instructional services.<sup>5</sup> Subpart 2 provides grants for support services such as research and evaluation; and, Subpart 3 provides four types of grants for professional development.<sup>6</sup>

The EIEP allocates formula grants to states based on their total enrollment of immigrant students who have been enrolled in the U.S. educational system for less than 3 academic years. To be eligible for funding, local districts must have at least 500 eligible students enrolled, or at least 3% of total enrollment must be eligible immigrant students (although states may reserve up to 20% of EIEP funds for high need local educational agencies (LEAs) not qualifying through regular program requirements). Funds may be used for a broad range of services and are not limited to bilingual education or any other method of English language instruction.<sup>7</sup>

## **H.R. 2, “Student Results Act”**

H.R. 2 would modify the BEA (Title VII, Part A) and rename it the “English Language Proficiency and Academic Achievement Act.” The bill would consolidate bilingual education instructional services grants and provides for discretionary grants where appropriations are below \$220,000,000 (Subpart 1) and a formula grant to states (for distribution of subgrants to LEAs) when the appropriation for a given year is \$220,000,000 or above (Subpart 2).<sup>8</sup> The requirement that only 25% of funding may be used for special alternative instructional programs would be eliminated. H.R. 2 would authorize \$220,000,000 for FY2000.

Through the formula grant program, funds would be distributed to states based on the proportion of LEP students within each state (excluding Puerto Rico and outlying areas) relative to the total number of LEP students in all states.<sup>9</sup> LEA applicants for subgrants under the formula grant program who had received a grant under Part A, Subparts 1 or 3 of the Bilingual Education Act must receive 1 year of funding from the state, with special application consideration if the project had been scheduled to continue beyond that year. H.R. 2 also requires that states discontinue funding to LEAs where the

---

<sup>5</sup> Not more than 25% of the funds provided under this subpart may be used for local programs that are “special alternative instructional programs” that do not make use of the student’s native language in instruction.

<sup>6</sup> For further information on each of these programs see CRS Report 98-501, *Bilingual Education: An Overview*.

<sup>7</sup> For further information see: CRS Report RS20042, *The Federal Emergency Immigrant Education Program*, by Patricia Osorio-O’Dea.

<sup>8</sup> When discretionary grants are in effect, ED may also award grants to state educational agencies (SEAs) that demonstrate effectiveness in providing for the education of LEP students. These awards may not exceed 5% of the total amount awarded to LEAs under Subpart 1 in the previous fiscal year, with a minimum award of \$100,000 to each SEA. Subpart 2 formula grants would be in effect, not only for the first year in which the appropriation is at or above \$220,000,000, but for all succeeding years.

<sup>9</sup> Under H.R. 2, Puerto Rico would receive 1.5% of the total appropriation for each fiscal year; outlying areas would receive 0.5%, and entities serving Native Americans and Alaska Natives would receive 0.5% of the total appropriation for each fiscal year.

majority of students are not attaining English language fluency and reaching state standards after 3 years of program participation.

In addition, each state must receive, for each subsequent fiscal year, a baseline amount equal to the amount awarded in FY2000 to the states and its LEAs. Of funds allocated to each state, at least 50% must be distributed to LEAs having the highest percentage of LEP enrollment — the remainder would be allocated on a competitive basis. States may reserve up to 5% of total funds for administration, professional development, technical assistance, and bonuses to subgrant recipients for exceptional performance (in which children enrolled in the program attain English language proficiency and meet state content and student performance standards).

**Parental Notification.** H.R. 2 modifies Title VII requirements regarding parental notification of a pupil's placement into an English language instructional program. Currently, Title VII does not require that parents be notified of the decision to place a child into an English language instruction program **prior** to the child's placement, but rather, requires that parents be informed of their option to decline having their child placed into an English language instruction program. H.R. 2, on the other hand, requires that districts obtain informed parental consent **prior** to placement of a limited English proficient child in an English language instruction program, and states that if parental consent cannot be obtained, school districts must provide the appropriate educational services to the pupil, and must maintain documentation of attempts to obtain informed parental consent.

**Student Assessment.** The bill also adds explicit language to Title VII regarding the assessment of English language learners. Through H.R. 2, LEP students receiving support under Title VII Part A, who have attended U.S. schools (except Puerto Rico) for 3 consecutive years must be tested in English for reading or language arts. However, a LEA may provide a 1-year waiver extension, on a case-by-case basis, to have the student tested in another language that they feel would best indicate the educational status of the student.

**Professional Development.** Bilingual education professional development grants would be consolidated into a single grant program of up to 5 years. Currently, BEA support for professional development is outlined in four separate programs — Career Ladder grants, Training for All Teachers grants, Teachers and Personnel grants, and Graduate Fellowships. Through the new program, grants would be consolidated into one program, and no more than 15% of the total appropriation for professional development grants may be used for graduate fellowships or for the recruitment of elementary and secondary education teachers.<sup>10</sup> Individuals receiving graduate fellowships would be required to serve as a teacher of LEP students or work in a program funded under Title VII, Part A for the amount of time equal to the time period in which they received the fellowship; individuals electing not to do so would be required to repay the fellowship award. H.R. 2 would authorize \$60,000,000 for professional development in FY2000.

**Evaluations.** All grant recipients under the amended Title VII, Part A would be required to submit biennial evaluations to the U.S. Department of Education (ED).

---

<sup>10</sup> Furthermore, not more than 10% of total funds under this subpart may be used to increase an individual's second language competence for use in instructional programs.

Evaluations would be used to determine the effectiveness of programs in assisting LEP students attain English proficiency as well as meet challenging state standards. Evaluations could also be used to determine whether continued funding for specific projects is merited.

**Other Title VII Provisions.** H.R. 2 eliminates Title VII, Part B, the Foreign Language Assistance program, as well as Title VII, Part A, Academic Excellence awards, and replaces the ED Office of Bilingual Education and Minority Language Affairs with a new Office of Educational Services for Limited English Proficient Children. The bill also eliminates the National Clearinghouse for Bilingual Education and moves research and information dissemination functions to the Office of Educational Research and Improvement, in coordination with the new Office of Educational Services for Limited English Proficient Children.<sup>11</sup> Finally, it increases the authorization for Title VII, Part C (which would become Part B), the Emergency Immigrant Education Program to \$175,000,000 for FY2000. Aside from increasing the authorization level, the remainder of the EIEP would remain unchanged.

**LEP Provisions in Title I.** In addition to the Title VII provisions for LEP students outlined above, H.R. 2 would amend ESEA Title I to add the parental consent requirement described above for pupils receiving Title I assistance. This new requirement would potentially add parental consent requirements and new administrative obligations to a much larger number of LEAs, given the greater scale of LEAs receiving Title I assistance compared to Title VII, Part A assistance. For example, recent figures indicate that over 1.85 million LEP students received Title I assistance in 1996-1997, compared to 480,000 LEP students in Title VII programs.<sup>12</sup>

In addition, Title I LEP students in the U.S. for 3 academic years must be tested in English for reading and language arts, unless the LEA, on a case-by-case basis, determines that testing the student in another language or using another method would yield more accurate results of the student's educational standing. This waiver of testing in English would be allowable for 1 year.

## **S. 2, "Educational Opportunities Act"**

S. 2 would amend several aspects of the BEA instructional services grants (subpart 1). First, the bill would consolidate the current Program Development and Implementation grants and Program Enhancement grants into a single 3-year Program Enhancement competitive grant program.<sup>13</sup> The Comprehensive School grants and Systemwide Improvement grants would also be consolidated into a single 3-year grant program.<sup>14</sup> Funds would be reserved for continued payment to currently funded Comprehensive School and Systemwide Improvement projects until the grant period expires. Of the remaining funds, two thirds would go to school activities and one third would go to

---

<sup>11</sup> Research would include identifying and disseminating successful models for teaching English and helping LEP students meet state standards.

<sup>12</sup> The total number of students participating in Title VII programs includes duplication of students participating in multiple programs funded by Title VII. See: Macias, *Summary Report*.

<sup>13</sup> Currently, Program Enhancement provides 2-year grants to eligible applicants.

<sup>14</sup> Each of these programs currently provides competitive 5-year grants.

district-wide activities. The bill would also add *required* activities to the consolidated Comprehensive School and Systemwide Improvement Grants program, among them: a new requirement that students served under funded projects be assessed annually to determine their English proficiency, that projects be aligned with state and local reform efforts, and that projects develop or improve accountability systems to monitor the academic progress of English language learners. In addition, S. 2 would eliminate the 25% funding cap for special alternative programs from instructional services grants. The bill would give priority to applicants: experiencing dramatic increases in LEP students and that have limited or no experience in serving LEP children; serving districts with less than 10,000 students; demonstrating success in assisting LEP students learn English and achieve high standards; proposing programs to provide bilingual proficiency for all project participants; and, serving districts with large percentages of LEP enrollment. S. 2 would also increase the minimum funding level for the SEA grant program (Subpart 2) from \$100,000 to \$200,000.

The bill would authorize \$300,000,000 for FY2001 for this part and such sums as may be necessary for the subsequent 4 years.

**Professional Development.** Under S. 2, all professional development projects would be required to submit annual evaluations to ED describing detailed participant information, program effectiveness, and the teaching effectiveness of the project participants. Currently, funded projects must submit evaluations to ED every 2 years. The bill would also emphasize LEA participation in the Training for All Teachers Program by authorizing grants to LEAs or to LEAs in consortia with SEAs, higher education institutions or nonprofit organizations. The current program allows ED to award grants to consortia of LEAs, SEAs, higher education institutions or nonprofit organizations.

**Evaluations.** Rather than submitting evaluations to ED every 2 years, as mandated in currently law, under S. 2 recipients of instructional services grants must submit annual evaluations to ED. Evaluations would be used to improve projects, redefine project goals, and to determine overall project effectiveness. Among other things, evaluations must include data on academic achievement in various subjects and the extent to which students are meeting the state's performance standards. Unlike H.R. 2, such evaluations would not be used as a basis for determining continued funding to certain projects.

**Other Title VII Provisions.** S. 2 would reauthorize the Foreign Language Assistance Program through FY2005, with a minor change to include special consideration for projects which make effective use of technology to promote foreign language education, which promote innovative activities, or that are carried out through a consortium that includes the grant recipient and an elementary or secondary school. The bill would authorize \$35,000,000 for FY2001 for the program, and such sums for the subsequent 4 years. Finally, no substantive changes would be made to the Emergency Immigrant Education Program under S. 2. The bill would authorize \$200,000,000 in FY2001 for the program and such sums as may be necessary thereafter.