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## **Education of Limited English Proficient and Recent Immigrant Students: Provisions in the No Child Left Behind Act of 2001**

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# Education of Limited English Proficient and Recent Immigrant Students: Provisions in the No Child Left Behind Act of 2001

## Summary

The No Child Left Behind Act of 2001 (NCLBA, P.L. 107-110) represents a major overhaul of federal programs for the education of limited English proficient and recent immigrant students. Programs for bilingual and immigrant education under the Elementary and Secondary Education Act of 1965 (ESEA) were consolidated and underwent several important changes with regard to the funding mechanism, method of instructional delivery, and focus on educational outcomes and accountability.

The NCLBA consolidated several competitively awarded grants in the Bilingual Education Act and a formula grant in the Emergency Immigrant Education Act (ESEA, Title VII, Parts A and C) into a single population-based formula grant. The new Language Acquisition State Formula Grant Program (ESEA, Title III) allocates 80% of funding according to the population of limited English proficient (LEP) students and 20% according to the population of recently arriving immigrants.

The law gives state and local educational agencies greater flexibility in the design and administration of language instructional programs and removes language in Title VII that encouraged bilingual instruction methods (i.e., curricula that develop proficiency in more than one language). At the same time, the law develops and focuses greater attention to the achievement of English proficiency.

Among many amendments to pupil assessment, the NCLBA builds upon language in the 1994 ESEA amendments. The law increases the reporting requirements for language and academic assessments as well as the accommodations under which those assessments are given to LEP pupils. Recipients of Title III money are also subjected to greater accountability standards tied to Title I adequate yearly progress (AYP) provisions.

In the first year of its existence, funding for Title III was dramatically increased over the previous year's Title VII appropriation — from \$460 million in FY2001 to \$665 million in FY2002. Since that time, the appropriations for the program have remained stable — \$684 million in FY2003, \$681 million in FY2004, and \$676 million in FY2005. The President's request for FY2006 would maintain this trend at \$676 million.

As with many other provisions in the NCLBA, the implementation of Title III has been met with vocal opposition. The Department of Education (ED) released non-regulatory guidance in the spring of 2003 that described how state educational agencies should apply for and allocate grants as well as the responsibilities of local educational agencies. In February 2004, the Secretary issued two policy statements that further clarify how he intends to implement the assessment and accountability provisions in the law.

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# Education of Limited English Proficient and Recent Immigrant Students: Provisions in the No Child Left Behind Act of 2001

## Introduction

The Language Acquisition State Grant Program under Title III of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the No Child Left Behind Act (NCLBA) contains provisions intended to address the specific educational needs of limited English proficient (LEP) students and students who have recently immigrated to the United States.<sup>1</sup> Title III represents a major overhaul of federal programs for LEP students formerly provided under ESEA, Title VII, Parts A and C.

One of the most significant policy changes made in this part of the law (P.L. 107-110) was the shift from several competitively awarded grants to a single population-based formula grant. State educational agencies (SEAs) and local educational agencies (LEAs) were also given greater flexibility in the design and administration of language instructional programs. At the same time, program objectives were more narrowly defined and were subject to new accountability standards as well as parental notification requirements. Appropriations for this program increased nearly 45% from \$460 million in FY2001 to \$665 million in FY2002 and leveled off at \$686 million for FY2003, \$681 million in FY2004, and \$676 million in FY2005. The President's request for FY2006 would maintain this trend at \$676 million.<sup>2</sup>

These amendments occurred at the end of a decade that saw two important and potentially conflicting developments with regard to the education of LEP students. The first concerns rapid growth of the non-native English speaking student population. The second involves increasing pressure to conduct assessments and hold schools accountable for academic achievement.

## Demographic Trends

The population of foreign-born individuals residing in the United States increased by more than 50% during the 1990s — from 20 million in 1990 to 31

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<sup>1</sup> In this report these two groups of students will be referred to as LEP students.

<sup>2</sup> U.S. Department of Education, *FY2006 Budget Justifications*.

million in 2000.<sup>3</sup> In fact, the growth of this group accounts for nearly half of the nation's overall population growth during the decade — from 249 to 274 million.

This population trend has been nearly matched by a 43% increase in the number of U.S. residents who report having poor English-speaking ability. Of the 45 million individuals who spoke a language other than English at home in 2000, 20 million (44%) said they spoke English less than “very well.” In 1990, of the 32 million who spoke non-English languages at home, 14 million (44%) spoke English less than “very well.”<sup>4</sup>

School enrollment data suggest that the increase in LEP students has been even more rapid. The U.S. Department of Education's National Clearinghouse for Bilingual Education estimates that LEP enrollment in U.S. schools during the 1999-2000 academic year was 4 million students — up from 2 million during the 1989-1990 academic year.<sup>5</sup>

## Student Assessment

Simultaneous with the influx of immigrants and students with limited English skills, there has been growing pressure on SEAs and LEAs to develop academic assessments and require that schools meet performance standards. In addition to education policies adopted in most states,<sup>6</sup> the Improving America's Schools Act of 1994 (IASA, P.L. 103-382) directed states to develop and implement “standards-based” assessments. In the late 1990s, schools were facing increasing pressure to test their students and, in some cases, demonstrate improvement in student achievement.

The IASA also required “reasonable adaptations and accommodations” be made for LEP pupils. The purpose of these accommodations was to provide an accurate and reliable measure of students' knowledge in core academic areas (in subjects other than English, such as math and science). The NCLBA also contains such accommodations but stipulates that they can only be made during an LEP pupil's first three years in U.S. schools. After three consecutive years in U.S. schools, LEP students are to be assessed in English.<sup>7</sup>

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<sup>3</sup> U.S. Census Bureau, 1990 and 2000 Census Summary Files.

<sup>4</sup> Ibid.

<sup>5</sup> U.S. Department of Education, *Annual Surveys of the States' Limited English Proficient Students and Available Educational Programs and Services*, 1990-1998.

<sup>6</sup> According to *Assessment and Accountability Systems: 50 State Profiles*, by the Consortium for Policy Research in Education, all but one state (Iowa) required assessments by 2001.

<sup>7</sup> ESEA, §3113(b)(3)(C)(x). The assessment of LEP students will be discussed in greater detail later in this report. For further information on overall NCLBA assessments see CRS Report RL31407, *Educational Testing: Implementation of ESEA Title I-A Requirements Under the No Child Left Behind Act*, by Wayne Riddle.

## Title III Provisions

The NCLBA also raised the stakes for poor student assessment outcomes and failure to meet progressively higher levels of academic performance. Schools must develop academic standards, establish levels of adequate yearly progress (AYP), and face serious consequences for failing to achieve that progress.<sup>8</sup> LEP students and the LEAs that serve them face particularly difficult challenges in achieving the goals set by the NCLBA.

According to the conference report (H.Rept. 107-334) for the legislation, the specific goals set by Title III are to:

- help ensure that LEP and recent immigrant children develop English proficiency,
- assist these students in achieving academic standards in core subject matter,
- develop language instruction education programs that assist SEAs and LEAs in teaching LEP and recent immigrant students,
- assist in preparing students to enter all-English instruction settings,
- promote parental and community participation in these programs,
- streamline programs designed to provide language instruction,
- hold SEAs and LEAs accountable for annual increases in English proficiency and core academic content, and
- provide SEAs and LEAs flexibility in implementing these programs.

## Formula Grants

To meet these goals, the NCBLA created an entirely new way of funding programs that serve LEP students. That is, Title III consolidated several Title VII programs into a single formula grant program (for fiscal years in which appropriations reach or exceed \$650 million).<sup>9</sup>

**Grants to States.** Grants are distributed to the 50 states, the District of Columbia, and Puerto Rico based on proportions of their LEP and recent immigrant

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<sup>8</sup> For more information, see CRS Report RL31487, *Education for the Disadvantaged: Overview of ESEA Title I-A Amendments Under the No Child Left Behind Act*, by Wayne Riddle.

<sup>9</sup> Title VII provided funds to SEAs and other eligible entities for numerous distinct language instructional programs and services. Part A, the Bilingual Education Act (BEA), awarded competitive grants for bilingual instructional and support services, professional development and foreign language instruction. Part C, the Emergency Immigrant Education Program, awarded formula grants to LEAs that recently experienced a large influx of immigrant students. Part B, the Foreign Language Assistance Program, is continued in the current reauthorization under Title V, Part D, Subpart 9. For further details on Title VII programs, see CRS Report 98-501, *Bilingual Education: An Overview*; CRS Report RS20042, *The Federal Emergency Immigrant Education Program*; and CRS Report RL31401, *Provisions for Limited English Proficient Students in H.R. 1, as Passed by the House and Senate*, all by Patricia Osorio-O'Dea.

populations relative to national counts of these populations. No state can receive a grant less than \$500,000.<sup>10</sup> The grant to Puerto Rico cannot exceed 0.5% of the total available for state distribution. Each state's share of the funds available for distribution (i.e., after continuation awards and reservations are removed) is described by the following equation:

$$State\_Share = \left( \frac{State\_LEP\_Pop.}{U.S.\_LEP\_Pop.} \right) * 0.8 + \left( \frac{State\_RIM\_Pop.}{U.S.\_RIM\_Pop.} \right) * 0.2$$

Where:

“State\_LEP\_Pop.” equals the number of LEP children in a state,

“State\_RIM\_Pop.” equals the number of recent immigrant children in a state,

“U.S.\_LEP\_Pop.” equals the number of LEP children in all states, and

“U.S.\_RIM\_Pop.” equals the number of recent immigrant children in all states.

**Continuation Awards and Reservations.** LEAs and other eligible recipients of Title VII grants under Subparts 1 and 3 of Parts A and C whose grants have not yet expired will continue to receive funds. These continuations as well as three reservations are set aside before state grants are distributed. The first reservation, a set-aside of 6.5%, provides (1) support for professional development through the National Professional Development Project and (2) continued funding of the National Clearinghouse for Bilingual Education (renamed National Clearinghouse for English Language Acquisition and Language Instruction Programs). A second set-aside of 0.5% (or \$5,000,000, whichever is greater) provides grants to schools that predominantly serve Native American and Alaska Native children. A third set-aside of 0.5% is reserved for schools in the Outlying Areas.

**Data for Determinations.** The Secretary is given the discretion to determine (between U.S. Census Bureau data and state-submitted data) the most timely and accurate source of data on which to base grant distribution. In the implementation thus far, population estimates for the number of LEP children were taken both from data available through the Census Bureau while estimates for the number of recent immigrant children were taken from data submitted by SEAs.

**Subgrants to Eligible Entities.** Within-state distribution of funds is based on the number of LEP children only — regardless of their immigrant status. However, states can reserve up to 15% for grants to eligible entities containing schools that have recently experienced large influxes of immigrant children. An eligible entity is defined as one or more LEAs in collaboration with an institution of higher education, a community-based organization, or an SEA. Before formula allocation, SEAs can reserve an additional 5% for state activities such as professional development, planning, evaluation, administration, technical assistance, and the like.

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<sup>10</sup> For the purposes of this report, the term “state” includes the District of Columbia and the Commonwealth of Puerto Rico.

The minimum grant to an eligible entity (hereafter referred to simply as an LEA) is \$10,000.

## **Flexibility and Accountability**

Title III also gave LEAs the autonomy to create local educational plans and established accountability provisions to be enforced by the Secretary of the U.S. Education Department (ED).

**Local Plans.** Local control of these plans is intended to give LEAs the flexibility to cater programs to the strengths and needs of their teachers and students. To receive a grant, each LEA must submit a plan to its SEA describing how it intends to use the funds for language instruction programs and activities designed to meet the goals and objectives laid out in Titles I and III. No specific methods of instruction are mandated under Title III. For example, schools are not required to teach students in their native language.<sup>11</sup>

**Reporting Requirements.** On the contrary, according to Section 3121(c)(1)(B), LEAs receiving Title III funds must submit program evaluations that report on LEP students who “have transitioned into classrooms not tailored to limited English proficient children.” These evaluations, submitted at the end of every second fiscal year, must report data on the number of LEP students participating in language acquisition programs and the proportion of these students who have transitioned out of these programs. After approving these LEA plans and reports, SEAs must submit them to the ED for approval.

**Academic and LEP Assessments.** Title I of the ESEA requires that LEAs, “will, beginning not later than school year 2002-2003, provide for an annual assessment of English proficiency (measuring students’ oral language, reading, and writing skills in English) of all students with limited English proficiency” (§1111(b)(7)). In addition to these assessments that test for limited English proficiency, academic assessments of students’ skills in math as well as reading and language arts are required of all students. LEP student may receive language accommodations for the math portion of the assessment; however, those who have attended U.S. schools for three consecutive years must take reading and language arts assessments using tests written in English.<sup>12</sup>

**Achievement Objectives.** SEAs must develop annual measurable achievement objectives that reflect (1) the amount of time individual children are enrolled in programs, (2) annual increases in the number or percentage of children learning English, and (3) the number or percentage of students receiving waivers for reading or language arts assessments. These objectives are all tied to provisions for

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<sup>11</sup> Under the four instructional services grants of the BEA (Title VII, Part A, Subpart 1), not more than 25% of the funds could be used for local programs that were “special alternative instructional programs” (i.e., that did not use students’ native language in instruction).

<sup>12</sup> LEAs may test LEP students in non-English languages for an additional two years (i.e., five years total) if, on an individual pupil basis, it is determined that such accommodations would provide more accurate and reliable assessment (§1111(b)(3)(C)(x)).



assessments and adequate yearly progress under Title I, Part A, Section 1111(b).<sup>13</sup> Three exceptions to these objectives can be made for LEAs that (1) experience significant increases in the number of LEP and immigrant children, (2) enroll a “statistically significant” number of immigrants who lacked access to education in their home country, or (3) enroll a “statistically significant” number of immigrants seeking refuge from war or natural disaster (§3122(a)(3)(B)).

**Accountability Provisions.** SEAs that find LEAs failing to meet these objectives for two consecutive years can require the LEA to develop an improvement plan. The SEA must provide technical assistance and consult with the failing LEA during the development and implementation of this plan. LEAs found to be failing for four consecutive years can be forced to modify their language instruction program, have their funds withdrawn, and have relevant personnel replaced by the SEA.<sup>14</sup>

**Parental Notification.** In addition to requiring LEAs to develop their local plans in consultation with parents and community groups, Title III provisions require that LEAs inform parents within 30 days of the beginning of the school year (or two weeks during the school year) if their child is identified for participation in a language instruction program. LEAs must also describe to such parents several aspects of the program including: the reasons for their child’s LEP classification, their child’s level of English proficiency, the methods of instruction and exit requirements of the program, and their right to remove their child from the program.<sup>15</sup>

## ED Policy Implementation

In February of 2003, ED issued non-regulatory guidance on the Title III state grant program.<sup>16</sup> This was the second piece of non-regulatory guidance — the first explained what SEAs and LEAs had to include in their grant applications. The second document laid out the standards, assessments, and accountability provisions described in the pages above.

ED has more recently announced two “new policies” regarding the implementation of the academic assessment and AYP provisions of the NCLBA.<sup>17</sup> In a February 19, 2004 press conference, the Secretary described these new policies as follows:

The new flexibility will allow LEP students, during their first year of enrollment in U.S. schools, to have the option of taking the reading/language arts content

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<sup>13</sup> For more information, see CRS Report RL31487, *Education for the Disadvantaged: Overview of ESEA Title I-A Amendments Under the No Child Left Behind Act*, by Wayne Riddle.

<sup>14</sup> Ibid.

<sup>15</sup> The Office of English Language Acquisition at ED has released a policy statement on this topic, available at [<http://www.ed.gov/about/offices/list/oela/decofparentrights.doc>].

<sup>16</sup> Available at [<http://www.ed.gov/programs/nfdp/NRG1.2.25.03.doc>].

<sup>17</sup> Available at [<http://www.ed.gov/news/pressreleases/2004/02/02192004.html>].

assessment in addition to taking the English language proficiency assessment. They would take the mathematics assessment, with accommodations as appropriate. States may, but would not be required to, include results from the mathematics and, if given, reading/language arts content assessments in AYP calculations.

Since LEP students exit the LEP subgroup once they attain English language proficiency, states may have difficulty demonstrating improvements on state assessments for these students. Accordingly, the other new flexibility would, for AYP calculations, allow states for up to two years to include in the LEP subgroup students who have attained English proficiency.<sup>18</sup>

By exercising the option not to give first-year LEP students the reading/language arts assessment, LEAs could more easily meet the requirement in the AYP provisions that at least 95% of all pupils in each demographic group within each school must be included in assessments.<sup>19</sup> Waiving the requirement that these first-year LEP pupil content assessments be counted in AYP calculations might also make meeting the requirements easier. In the later stages of AYP implementation (as states try to meet progressively higher levels of performance), doing so would presumably increase the proportion of LEP students scoring at an adequately high level.<sup>20</sup>

Exercising the second policy option would seem to have a definite positive effect on state's ability to meet AYP requirements. Former LEP students recently moved out of that subgroup would presumably score lower on average (particularly on reading assessments) than those who never were classified as LEP. Thus, including former LEP pupil assessments with those a non-LEP subgroup would lower that subgroup's average score. Likewise, including former LEP pupil assessments with those still in the LEP subgroup would raise that subgroup's average score.

The first of these new policies might have the effect of buffering states and LEAs, in particular, from the effects caused by a large influx of LEP in-migrants from other areas. Being able to hold the new students out of AYP calculations would allow such LEAs to demonstrate the progress they've made with the LEP students that have been in their schools for a year or two. The second of these new policies will have the effect of smoothing the requirement that schools must transition LEP pupils into non-LEP classrooms. That is, it may remove one disincentive to reclassifying LEP students as non-LEP students.

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<sup>18</sup> The text from this press conference is available at [<http://www.ed.gov/news/pressreleases/2004/02/02192004.html>].

<sup>19</sup> For more information, see CRS Report RL31487, *Education for the Disadvantaged: Overview of ESEA Title I-A Amendments Under the No Child Left Behind Act*; and CRS Report RL31407, *Educational Testing: Implementation of ESEA Title I-A Requirements Under the No Child Left Behind Act*, both by Wayne Riddle.

<sup>20</sup> However, ED has not made clear whether states which do this would also be required to hold first-year LEP students out of calculation of the "starting point" which is based on data for the 2001-2002 school year (§1111(2)(E)).

## Funding

**Table 1** shows the formula-based allocation of these funds to each state for the last three fiscal years.

**Table 1. Language Acquisition State Grants**

State or other area	2004 Actual	2005 Estimate	2006 Estimate	Change from 2005 estimate
Alabama	\$1,878,554	\$3,097,342	\$3,337,650	\$240,308
Alaska	\$861,613	\$500,000	\$506,735	\$6,735
Arizona	\$16,453,934	\$17,287,602	\$18,628,864	\$1,341,262
Arkansas	\$1,871,562	\$2,013,886	\$2,170,133	\$156,247
California	\$161,549,115	\$155,390,437	\$167,446,440	\$12,056,003
Colorado	\$7,069,901	\$10,465,875	\$11,277,872	\$811,997
Connecticut	\$5,380,812	\$4,440,184	\$4,784,676	\$344,492
Delaware	\$725,465	\$825,099	\$889,114	\$64,015
District of Columbia	\$680,354	\$878,885	\$947,074	\$68,189
Florida	\$36,272,809	\$36,610,687	\$39,451,135	\$2,840,448
Georgia	\$11,254,952	\$10,090,159	\$10,873,006	\$782,847
Hawaii	\$2,186,577	\$2,092,263	\$2,254,592	\$162,329
Idaho	\$1,297,826	\$1,300,959	\$1,401,894	\$100,935
Illinois	\$25,929,181	\$27,785,765	\$29,941,530	\$2,155,765
Indiana	\$4,276,401	\$6,387,603	\$6,883,187	\$495,584
Iowa	\$2,193,017	\$2,199,322	\$2,369,957	\$170,635
Kansas	\$2,975,681	\$2,785,405	\$3,001,512	\$216,107
Kentucky	\$1,812,413	\$2,252,419	\$2,427,174	\$174,755
Louisiana	\$2,328,221	\$1,226,927	\$1,322,119	\$95,192
Maine	\$500,000	\$500,000	\$500,000	—
Maryland	\$5,867,566	\$7,660,208	\$8,254,527	\$594,319
Massachusetts	\$9,673,186	\$12,011,875	\$12,943,819	\$931,944
Michigan	\$8,220,261	\$9,324,225	\$10,047,647	\$723,422
Minnesota	\$6,108,755	\$6,711,635	\$7,232,358	\$520,723
Mississippi	\$971,870	\$699,160	\$753,405	\$54,245
Missouri	\$3,130,233	\$4,721,916	\$5,088,266	\$366,350
Montana	\$500,000	\$500,000	\$500,000	—
Nebraska	\$1,863,656	\$2,356,197	\$2,539,003	\$182,806
Nevada	\$5,706,721	\$8,454,264	\$9,110,190	\$655,926
New Hampshire	\$532,764	\$737,838	\$795,084	\$57,246
New Jersey	\$16,278,278	\$19,780,062	\$21,314,703	\$1,534,641
New Mexico	\$5,494,409	\$4,374,845	\$4,714,268	\$339,423
New York	\$47,907,904	\$48,474,159	\$52,235,038	\$3,760,879

State or other area	2004 Actual	2005 Estimate	2006 Estimate	Change from 2005 estimate
North Carolina	\$8,883,786	\$10,657,679	\$11,484,558	\$826,879
North Dakota	\$500,000	\$500,000	\$500,000	—
Ohio	\$6,438,717	\$8,115,267	\$8,744,892	\$629,625
Oklahoma	\$2,916,153	\$3,264,297	\$3,517,558	\$253,261
Oregon	\$4,951,822	\$5,353,142	\$5,768,467	\$415,325
Pennsylvania	\$9,383,763	\$10,689,089	\$11,518,404	\$829,315
Rhode Island	\$1,768,126	\$2,140,409	\$2,306,473	\$166,064
South Carolina	\$2,442,675	\$2,790,960	\$3,007,497	\$216,537
South Dakota	\$534,980	\$650,534	\$701,006	\$50,472
Tennessee	\$3,686,302	\$3,930,993	\$4,235,980	\$304,987
Texas	\$74,350,392	\$82,919,829	\$89,353,183	\$6,433,354
Utah	\$3,396,597	\$4,007,889	\$4,318,842	\$310,953
Vermont	\$500,000	\$500,000	\$500,000	—
Virginia	\$7,273,394	\$8,439,814	\$9,094,618	\$654,805
Washington	\$9,607,031	\$10,883,972	\$11,728,407	\$844,435
West Virginia	\$500,000	\$500,000	\$500,000	—
Wisconsin	\$4,914,400	\$6,144,558	\$6,621,285	\$476,727
Wyoming	\$500,000	\$500,000	\$500,000	—
American Samoa	\$1,161,870	\$1,152,575	\$1,152,575	—
Guam	\$1,199,517	\$1,189,921	\$1,189,921	—
Northern Mariana Islands	\$912,447	\$905,147	\$905,147	—
Puerto Rico	\$2,725,136	\$2,894,099	\$3,117,307	\$223,208
Virgin Islands	\$132,241	\$131,183	\$131,183	—
Freely Associated States	—	—	—	—
Indian set-aside	\$5,000,000	\$5,000,000	\$5,000,000	\$0
Other (non-State allocations)	\$127,781,638	\$88,566,722	\$43,924,725	(\$44,641,997)
<b>Total</b>	<b>\$681,215,000</b>	<b>\$675,765,000</b>	<b>\$675,765,000</b>	<b>—</b>

**Source:** U.S. Department of Education, Budget Service, Feb. 12, 2004