
*Testimony of
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to the*

*Assembly Standing Committee on
Education*

October 26, 2006



Testimony

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NYSUT Testimony
before the
Assembly Standing Committee on Education

Subject: Limited English Proficient/English Language Learner (LEP/ELL) Student Assessment Policy in New York State under the Federal No Child Left Behind Act.

October 26, 2006

Good morning. My name is Maria Neira, Vice President of New York State United Teachers. I am here today representing both NYSUT and the UFT. As you know, the UFT is our largest affiliate with 160,000 members, and NYSUT represents 575,000 members, including teachers, school-related professionals, higher education faculty, other professionals in education and health care, and retirees.

I also speak from the perspective of an ELL student and former 4th grade bilingual teacher at the Bilingual Bicultural Mini-school in Manhattan and as an advocate for students, teachers and families.

On behalf of NYSUT, I thank Assemblywoman Nolan and the Assembly Standing Committee on Education for providing this opportunity to share our views regarding changes in New York policy concerning the assessment of English language learners.

NYSUT respectfully disagrees with the New York State Education Department's current plan to comply with the federal testing requirements related to recently arrived English language learners.

NYSUT believes that the new policy will have a negative and devastating impact on English language learners, their education, their parents, their teachers, and the community.

We believe that the United States Department of Education must allow New York State the flexibility to develop a more viable and sound alternative compliance plan in order to satisfy the federal requirements.

This past summer, the United States Department of Education reversed a position it had authorized since 2003. Based on the findings of a Title I peer review, they rescinded the New York State Education Department's (SED's) authorization to use the New York State English as a Second Language Achievement Test (commonly referred to as the NYSESLAT) for purposes of determining English language proficiency and school accountability under

the federal No Child Left Behind Act. Prior to the 2006-07 school year, LEP/ELL students who had attended school in the United States for less than three consecutive school years were allowed to take the NYSESLAT in lieu of the Grades 4 and 8, and in 2005-06, the Grades 3-8, English language arts (ELA) assessments to meet Title I accountability requirements. State policy leaders, educators and parents were led to believe that the NYSESLAT would continue to serve this dual purpose, especially in light of the latest revisions to the NYSESLAT.

In a letter to Commissioner Mills, the USDOE specifically indicated: "The NYSESLAT is not sufficiently comparable to the regular New York State English language arts assessment to use as a substitute language arts assessment." They gave the New York State Education Department 25 days to provide a plan and detailed outline for how it will come into compliance by the end of 2006-07.

To comply with this directive, the State Education Department will require all English language learner students who have been in the United States for as little as one year to take the same Grades 3 through 8 English language arts assessments as the rest of the student population in addition to the NYSESLAT.

It is our understanding that the version of the NYSESLAT reviewed by the USDOE was not the most currently revised test that will be administered this year. The State Education Department in collaboration with the NYSESLAT's developer has redesigned this assessment to more closely align it with New York State's English language arts and reading standards. The bottom line is that New York is complying with a directive based on a USDOE finding related to a test that is no longer in use in this state. We believe the State Education Department should be granted a waiver by the USDOE on complying with its directive until the federal government reviews the latest version of the NYSESLAT.

By staying the course, ELLs will be in the dubiously unique position of being the only subgroup in the state tested twice in English language development. NYSUT does not support this response! It's unfair and educationally unsound.

By definition in state and federal law and regulations, English language learners in New York are not proficient in English. Their group classification, as required by federal and New York law and regulation, is based on lack of English proficiency. There is absolutely no evidence to show that multiple testing in English is what will make ELLs English proficient, just as speaking to them in English louder will not make them understand better. However, sustained quality instruction over time by caring and qualified teachers will. NYSUT believes that maximum time should be devoted to teaching and learning and not to inappropriate testing.

Our concerns are echoed by the educators, ELL practitioners and advocates who attended a July 2006 meeting of SED's newly established ELL/ESL Committee of Practitioners. These advocates are fearful that requiring newly arrived ELL students to take the ELA

assessments will unfairly label students as failures and inappropriately increase the number of schools in need of improvement.

We believe, and many other members of the Committee of Practitioners agree, that the New York State plan to administer the English language arts assessments to ELLs will not provide accurate or useful information on the English language arts skills of our more recently arrived ELL students. There is absolutely no evidence that the state's current ELA assessments would provide a more valid and more reliable measure of ELL students' performance. Intuitively we know that it would not be a better measure because it was developed to measure the performance of proficient English speakers, many of who do not speak any other language. No one seems to know how many students, if any, participated in the field testing of these ELA assessments which were used in the standards setting process.

We believe states and school districts should be held accountable for the performance of all students, including recently arrived English language learners. There must be high expectations for learning and measurements to determine how students are performing and progressing. And assessments must be used as tools for improving progress, not as punishment for struggling schools.

NYSUT will not support unfair testing. I was recently reminded of the 1974 landmark civil rights Supreme Court Decision, *Lau vs. Nichols*:

"There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education."

It is NYSUT's position that this Supreme Court ruling also extends to the "same test." Using the same ELA tests designed for, and validated and normed on English proficient students to measure the ELA performance of their ELL peers is to blatantly deny them the civil rights protected under this decision.

We want to remind the federal and state officials of the *Lau* decision and their responsibility to refrain from issuing or implementing policy and procedures that are in violation of that court ruling. Again, I repeat, it is our opinion that in the United States the same test is not equal treatment for our ELL students.

While the research clearly tells us that it takes from four to seven years for newly arrived students to become proficient in English, the performance data on students taking the NYSESLAT is further evidence of the difficulty ELL students have achieving language proficiency. Based on 2005 SED data, only 11 percent of ELL students scored proficient on the NYSESLAT. This data underscores the huge gap in their understanding of the English language.

According to a recent report, published by the American Educational Research Association, some students can learn basic English reading skills in two years, but their chances of failing late in school are still greater than English-speaking students. It takes far longer than two years to become fluent as native speakers to acquire the broad vocabulary and reading comprehension skills needed for sustained academic achievement. A 1997 report by Diana August and Kenje Hakuta titled *Improving Schooling for Language Minority Students* stated that it takes 4-7 years for academic proficiency. This time frame was recently reaffirmed through a meta-analysis of research titled *Developing Literacy in Second Language Learners: A Report of the National Literacy Panel on Language - Minority Children and Youth*.

Another study conducted by researchers Virginia Collier and Wayne Thomas examined the question “How Long Does it Take an ESOL student to learn English for School Purposes”? The researchers determined that older students who have not had any schooling in their first language generally required 7-10 years to perform at the average level of native English speakers on academic tests in English. Further findings noted that students with 2-3 years of schooling generally require 5-7 years to perform at this level.

The importance of acquiring English proficiency as quickly and efficiently as possible cannot be overstated. Students who cannot read and write proficiently in English cannot participate fully in schools, work places or society. Inadequate skills in English, reading and writing relegates these individuals to the sidelines and affects this nation’s potential for economic competitiveness, innovation, productivity, growth and quality of life. (August and Hakuta, 2006)

There are approximately 200,000 English language learners in New York State. Across the nation and in New York State, the number of students from non-English speaking backgrounds continues to rise. In fact, they represent the fastest growing segment of the student population. Most of these students are in high-need school districts, including, obviously, New York City. Many ELL students received little or no formal education before they arrived in the country.

Here’s the bottom line – the federal government pays two-thirds of the State Education Department’s costs for staffing and programs of the SED’s Elementary, Middle, Secondary and Continuing Education office and with that weapon drives policy and spending decisions, while it only pays 6 cents of every K-12 education dollar spent in the schools in our state. **The federal government promised to fully fund IDEA but hasn’t since 1975. IDEA is currently \$682 million short of its authorized level. NCLB has been another empty promise – New York State’s funding is \$673 million short of its authorization.** We should all be concerned about SED’s need to rely on federal resources to support its operations, and the “nexus” it potentially has on shaping state education policy to conform with requirements mandated by the federal government.

While not the topic of this hearing, we would be remiss if we did not mention the harmful affects of another “flip flop” in USDOE policy affecting the assessment of students with disabilities. The USDOE policy shift now prohibits New York State’s practice of administering an out-of-level assessment to students with moderate cognitive disabilities who are unable to meet grade-level standards. This practice will now require, for example, an eighth grade student with a disability, reading on a third grade level to take a Grade 8 English language arts assessment. We regard this misguided directive as another example of labeling another group of our vulnerable learners as failures. Once again, it is unfair to students.

NYSUT remains determined to fight against the USDOE policy shifts, and we urge your advocacy both at the state and federal level to limit the intrusion of the USDOE in establishing state policy, and to seek fairer and more appropriate assessments for our students. It is still not too late for USDOE and SED to make a mid-course adjustment. It’s not just the right thing to do. It’s the only thing to do.

We need to seek other more appropriate options, to ensure compliance with NCLB accountability requirements and provide reasonable time to implement the options. These options must reflect the best thinking of what is good for our students, teachers and schools and should not be driven by Washington policymakers who have not considered the harmful affects of bad policy.

I urge your advocacy for the following recommendations:

1. The State Legislature should urge the USDOE to grant the State the authority to administer the revised NYSESLAT assessment for the purposes of both Title I accountability and Title III language proficiency, in lieu of requiring recently arrived ELL students take an inappropriate ELA assessment.
2. The State Education Department should continue to review data on ELL students who have previously taken the ELA and, if necessary, conduct an additional statistically valid sampling of ELL students participating in the grades 3-8 English language arts assessments to continuously improve the NYSESLAT.
3. Based on this data and broad-based input from the field, SED should develop a grade-by-grade NYSESLAT assessment to be used as a fair measure of proficiency in reading and English language arts skills for English language learners in this country for less than three years.
4. The New York State Legislature should supplement the SED for any sanctions that may be imposed by the USDOE if they refuse to allow the time needed to do the right thing for our ELL students by providing them with fair testing.

ELL students don't have a lot of political power. Their parents are often struggling to learn English themselves. Sometimes, the only advocates these students have are their classroom teachers, the educators struggling to help them learn English. I was one of those teachers. I know hundreds of them. They're appalled by what's being done to their students, and they're demanding a change. One of those teachers is here with me today. Katie Kurjakovic is an elementary ESL teacher in P. S. 11 in Queens. She agreed to come down and answer questions from the classroom perspective, a perspective that's been missing in all of these discussions in Washington. Later in this hearing you will hear from Martin Plotkin, the UFT representative from District 6 – the district with the largest concentration of ELL students in New York City. He will speak from practical experience with students and teachers.

USDOE and SED didn't speak to teachers like Katie before they turned down this road. They didn't ask teachers like her the best way to assess progress for ELL students. They didn't ask teachers like her what works.

If they had asked, we would have a very different plan in meeting our collective responsibility for compliance.

Thank you.

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