

## Position Paper on No Child Left Behind

In conjunction with organizations that advocate for the rights of language minority students to equity and equal access to academic opportunities in public schools, the California Association for Bilingual Education (CABE) joins the Partnership for Advocacy Joint Organizational Statement of October 21, 2004 on the No Child Left Behind (NCLB) Act. The Joint Organizational Statement was undersigned by 56 organizations as of April 11, 2005. In addition, CABE takes a position as articulated below regarding the impact of NCLB on language minority students (herein termed English Language Learners or ELL). This position statement is intended to guide policy makers and legislators involved in the reauthorization of NCLB in 2007.

CABE calls for the following amendments and changes to NCLB in the reauthorization process:

1. Reliable and valid language proficiency measures must be used to determine Adequate Yearly Progress (AYP) for ELL populations and target goals must be reasonable and realistic so that effective programs and schools are not unjustifiably penalized. Students' scores on measures of English proficiency must be linked with content standards tests so that the public understands the relationship between levels of English proficiency and students' abilities to demonstrate their academic knowledge and skills. This must include measurements that utilize students' native language proficiency and/or modifications in the language challenge of English tests to demonstrate their learning gains.
2. The effectiveness of sanctions for low-performing schools must be changed to eliminate measures that are punitive and disruptive of on-going reforms and that undermine effective programs for ELL students. Reasonable timelines for sustained school and programmatic reform must be adopted to support positive systemic change in serving ELL.
3. NCLB must allow for multiple measures of academic achievement in order to shift the focus away from testing and onto curricular and programmatic reforms with demonstrated effectiveness in increasing English proficiency while also teaching content knowledge to students during the English acquisition process. This includes support for effective bilingual instruction and well-designed and implemented bilingual programs. The NCLB provisions allowing for testing in students' native language must be uniformly implemented by the states in a way that is consistent with the intent of the law.

### Intent of the NCLB Act

CABE is committed to providing educational opportunities for all students to develop dual language skills to become 21<sup>st</sup> Century Citizens and to participate fully in the highly-

competitive global economy. CAFE supports the goals of NCLB that focus on raising the academic achievement of all students, and most especially those students who have traditionally been underserved and denied equal education opportunities in the public schools. These include students of color, students from low-income families, and students with limited English proficiency or ELL. CAFE's membership serves a majority of the students who fall into one or more of these categories. Given this reality, CAFE has concerns about the underlying assumptions of the law. NCLB's arbitrary achievement targets for schools are based on the assumption that remedies and corrective action for all or most of the factors that account for low academic achievement, as measured on standardized tests, are within the control of the public schools. NCLB places undue emphasis on annual student testing for determining the overall performance of schools. The law also assumes that the sanctions imposed on low-performing schools will result in improved performance. Policies based on these flawed assumptions create obstacles to school improvement, rather than support reforms that better serve the very students whose underachievement NCLB is intended to address. Based on the rationale described below, CAFE concludes that there are revisions in the NCLB law that must be included in the reauthorization to ensure that the law achieves its stated goals and supports the academic achievement of ELL.

### The California Context

According to the California Department of Education (2006), California has 1.5 million ELL students, or 25% of the total school enrollment. This is the largest enrollment of ELL in the nation. In addition, one million students are classified as Fluent English Proficient and are reclassified as fluent in English as their second language. These students, who are at different points in the process of acquiring full academic English proficiency, comprise 42% of California's total school population. The results of the California English Language Development Test for 2005-06 (CELDT) show that 57% of the ELL score at or below the intermediate level in English proficiency. One in every three kindergarten students are classified as ELL. These students are concentrated in certain geographical regions of the state. Twenty districts have large concentrations of ELL and serve 45% of the total ELL population in the state. Most of these are large urban school districts located in the southern region of California (Legislative Analyst's Office, 2003). Seventy-five percent of ELL in grades 1-4 are enrolled in classrooms where 50% or more of their classmates are also ELL (Gándara et al., 2003). The impact of NCLB sanctions on schools with large percentages of ELL among their student population are disproportionate because of the sanctions imposed on schools designated as "low-performing" due to low test scores for the ELL subgroup.

### Reliable & Valid Assessment Measures

Under the California Public Schools Accountability Act and NCLB, schools are held accountable for two aspects of the learning and academic growth of ELL students: Their level of "proficiency" in reading and mathematics and their growth in English language proficiency. Schools are required to meet specific targets, termed Annual Measurable Achievement Objectives (AMAO) under Title III, in gains in ELL students' scores on standardized language proficiency assessments and academic tests. CAFE affirms and promotes the overall goals of accountability and specifically those components of NCLB

that lead to the effective application and use of on-going formative assessment to guide program design and instruction. However, the NCLB accountability system for measuring growth through standardized tests in reading and math administered in English to students who are classified as limited English proficient (LEP) are not valid and reliable measures of academic skills and knowledge. NCLB allows states to exempt students who have been in school in the United States for less than three years based on the assumption that after three years students will have acquired sufficient English and content area knowledge to demonstrate their knowledge on a test. There is no research evidence in the field of education tests and measurements to support this premise. ELL typically experience delays in academic learning while they are acquiring English and therefore generally do not perform at grade level on standardized tests administered in English.

Compliance with the mandate for adequate yearly progress in English acquisition is measured through the annual administration of the California English Language Development Test (CELDT). Currently, the targets for growth in language proficiency, AMAO are set at one language level on the CELDT per year of instruction. This requirement exceeds the statewide 6.7 years average rate for acquiring proficiency, which equates to a gain of .75 CELDT level per year (Legislative Analysts' Report, 2003). It is of questionable value to impose sanctions on schools for not demonstrating above-average gains in English acquisition among large populations of ELL, especially since many factors that promote rapid acquisition of English are beyond the schools' control.

CABE affirms the effectiveness and value of bilingual education in addressing these defects in the law and implementation of NCLB. Bilingual education supports ELL students' growth in the literacy and in the content areas through instruction in students' native language while they are acquiring English. Current scientific research studies (Genessee et al., 2006; Krashen & McField, 2005, Rolstad et al, 2005; Slavin & Cheung, 2005) are evidence that bilingual programs are effective in promoting grade-level equivalent academic growth and English acquisition simultaneously. Furthermore, testing in students' native language should be permitted for all ELL to demonstrate their academic knowledge without making all testing in English a de facto test of English language proficiency. Bilingual programs have demonstrated their effectiveness over the long term in achieving the goals of NCLB and should not be required to shift their focus on simultaneous dual language literacy and English language development under the misguided belief that English-only programs will achieve greater short-term gains in English. California schools are unfairly subjected to sanctions under the law because of ELL scores on the California Standards Test when in fact students are making adequate gains in academic knowledge and skills. These sanctions are especially unfair and unequal when students are not tested in the language of instruction in dual language programs so that they can demonstrate their true levels of academic growth.

#### Effectiveness of Sanctions

NCLB's sanctions for low-performing schools require the State to take specified corrective actions to improve the school's performance. Sanctions include offering parental options to elect to transfer students to another school or provide supplemental services. If a school's performance fails to improve, reconstitution of school administrative structures and

replacement of a certain percentage of teachers may be required. Under NCLB's criteria, schools making average or above average progress in teaching English and academic content may be subjected to sanctions regardless of the effectiveness of their programs of instruction. Many of the sanctions are counter-productive because they destabilize school faculties, disrupt on-going reform efforts that may be effective, and create disincentives for attracting and retaining highly-qualified teachers at the schools. The pace of imposition of sanctions therefore aggravates rather than ameliorates the academic challenges facing the most disadvantaged students. In particular, the "school choice" option allowing parents to transfer students within the school district causes administrative difficulties in terms of resource allocation, staffing, and program continuity, diminishing the effectiveness of on-going reform efforts. CABE supports parental choice of programs of instruction within schools, including dual language and double literacy programs. NCLB's school choice provisions aggravate problems caused by high levels of student mobility experienced by many school districts serving large ELL populations. Policymakers must also consider the cost to taxpayers of policies that undermine rather than support school improvement efforts.

### Multiple Measures of Academic Achievement

NCLB requires annual testing of students in grades 3-9 in reading and mathematics. The law also requires that students with limited English proficiency be tested annually to determine their growth in English language learning. The collective wisdom and expertise in the field of psychometrics, education tests and measurements, and language assessment leads numerous organizations to oppose the uses of "high-stakes" testing required under NCLB for making important evaluative and academic decisions in education. The failure to use multifaceted, reliable and valid evaluative measures robs the stakeholders in public education and the taxpayers of accurate information concerning ELLs' academic growth and real improvements in schools' performance in serving this population.

CABE supports formative assessment and evaluation that are based on authentic products of students' classroom work that are used for purposes of accountability in improving school programs and classroom instruction. However, the narrow focus on testing in two academic areas has had the unintended consequence of diminishing the time dedicated to instruction in the content areas of social studies, science, and the creative arts. The focus on accelerated English acquisition has distorted the curricular focus and discouraged the types of integrated instruction beneficial for ELL in keeping up with and/or recouping content learning while they acquire English proficiency. School district administrators and teachers also observe an excessive focus on students who test near academic proficiency, in an attempt to raise their scores to avoid sanctions, while neglecting those students who are further below defined levels of academic proficiency.

### Support for Effective Bilingual Programs

NCLB has detrimental effects on the implementation of sound and effective programs for ELL because of differences that are masked by one-size-fits-all testing in English in the populations served through bilingual program models. There is ample research evidence (AIR/WestEd, 2006; Genessee et al., 2006; Krashen & McField, 2005, Rolstad et al, 2005; Slavin & Cheung, 2005) demonstrating the effectiveness of well-implemented bilingual

instructional programs in reaching two important goals: English acquisition and students' grade level achievement in content-area knowledge through instruction in their non-English native language. Such programs are a legal option provided to parents of ELL through the waiver process under California law. Since the students served through bilingual programs generally have lower test scores on the CELDT, many of these programs are in schools in "Program Improvement" despite their demonstrated effectiveness in increasing ELLs' English proficiency and content knowledge.

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