

Tweaking NCLB

States given more time to meet needs of English-learning students

By Charlotte Postlewaite

The No Child Left Behind Act's testing requirements for English Language Learners have troubled many educators from the beginning, and perhaps were a major catalyst for some states to face losing federal funds by threatening to opt out of the provisions in the two-year-old federal legislation.

In February, however, U.S. Secretary of Education Rod Paige responded to some of those complaints by announcing policy changes in testing and reporting the progress of ELLs. According to Paige, the department would add two new elements of flexibility, effective immediately, that would help states and their schools meet the needs of students who are learning English and avoid penalties for not making adequate yearly progress.

Calling the changes a "win-win" situation for both students and schools, Paige said, "Our new policy pro-

vides a much needed one-year transition for our schools. It allows schools to substitute an assessment of English language proficiency, if they so choose, for the assessment of reading competency during a student's first year in U.S. public schools." He said that this English language proficiency test would not count toward the adequate yearly progress goals for the school, but that students who take the test would continue to count toward the 95 percent participation rate for their subgroup. Under NCLB, in order to show adequate yearly progress, schools must test at least 95 percent of the various subgroups of children, including students with disabilities and those with limited English proficiency.

"We want to make sure these children are counted and a part of the assessment system. This change allows schools one more year to prepare these students to learn in English," he said.

The second change is more technical. It addresses complaints from states about how schools classify students who have made progress in learning English.



Paige acknowledged that the law made it difficult to show gains for ELL students and to show gains in proficiency because of the constantly changing classification of those students.

States had complained that once ELL students became proficient, they were removed from the subgroup of limited English proficiency students. Thus, there was no way to credit states for success in helping those students.

Although the changes are a welcome shift in policy for states, some education advocates and policy-makers said the changes are a good start, but they will not be enough if states are to hold steady to their commitment to comply with all aspects of NCLB.

Demographics

Recent demographic shifts help explain the mixed reaction to Paige's announcement.

For one thing, the U.S. Census Bureau announced last year that Hispanics are now the largest minority group in the country, surpassing the number of blacks.

This year, Florida reported that for the first time, ethnic minorities outnumber whites in public schools, with Hispanics showing the most growth. And according to the National Center for Education Statistics, the number of five to 24-year-olds who spoke a language other than English at home more than doubled between 1979 and 1999.

Among those young people who spoke a language other than English at home in 1999, one-third spoke English with difficulty, according to the NCES report, which also noted that Spanish is the language most frequently spoken among those who speak a language other than English at home.

Virginia Del. James H. Dillard II, a former school administrator, said the changes in the ELL policy were a good start, but not enough. "We're still getting a lot of stonewalling and platitudes," he said.

Dillard said he told the undersecretary of the U.S. Education Department, Eugene W. Hickok, states weren't given enough guidance in implementing the 1,100-page, four-inch thick No Child Left Behind Act, which is accompanied by a four-inch thick copy of regulations. The accommodations that were supposed to help the states, said Dillard, were a disproportionately thin quarter-inch thick.

"I told Secretary Hickok that if states

were not reacting as they are, the USDOE would still be doing nothing," Dillard said. "I quite frankly think this is going to take legislation which they want to avoid; they don't want this bill to go back to Congress because they are afraid they'll make changes that they don't like. Our feeling is that unless some changes are made the bill will simply implode of its own weight."

Ross Wiener, executive policy director with Education Trust, a nonprofit organization that advocates raising academic achievement for K-12 and college students, said the changes announced by Paige "bring more clarity and common sense to the rules

these changes will achieve that, we are hopeful that this is the beginning of a substantive dialogue on policies needed to increase the achievement of the nation's 5.5 million ELL students," the press release said.

The National Education Association praised the Education Department's regulatory changes for English Language Learners but called for more common sense on this and similar No Child Left Behind issues that have caused confusion among states and local school districts. Dan Kaufman, a spokesman for NEA, told The Council of State Governments that NEA's



regarding limited-English proficient students and, consequently, represent important progress.

"The shame of it is that it took the department more than two years to offer such a simple, common-sense solution to a problem that has been bedeviling implementation efforts from the beginning," he said.

The National Council of La Raza, an advocacy group for Hispanics, issued a statement that applauded the announcement on the one hand while also raising questions about what effects the policy change will have on narrowing the achievement gap for Hispanic and other English Language Learners.

"The National Council of La Raza is encouraged that the administration is willing to revisit NCLB and seek changes to make it an effective tool for improving ELL student outcomes. While it is unclear that

"Great Public Schools for Every Child Act" provides model legislation that puts much-needed improvements in place for the federal law.

"NEA thinks the policy changes for special ed and now for LEP (Limited English Proficiency) testing are good, but they are just the tip of the iceberg," Kaufman said. "I think they will have to do significantly more for people to say they can work with this legislation. Right now, they're taking baby steps but they are steps in the right direction."

After High School

The post-secondary future for many Hispanic students and those in other minority groups hangs in the balance as questions about equal educational opportunity and access are raised at the state and federal levels.

One of the most controversial issues is the debate over whether undocumented immigrant college students, many of whom came to the United States as infants or young children, should be eligible for in-state tuition at public colleges and universities.

Without a reasonable goal to pursue after high school, advocates for the higher education reform say, many immigrant students will not see a need to complete high school if they cannot afford to attend college.

State and federal policy-makers struggle to define where American education policy should stand on the immigration issue. If



federal law and the K-12 public schools want to provide equal opportunities for the nation's elementary, middle and high school undocumented students, for example, what are states and the federal government doing to ensure that those opportunities carry over into post-secondary pursuits? Some say the door of opportunity slams shut at the threshold to college.

According to Josh Bernstein, director of policy at the National Immigration Law Center, seven states have passed legislation allowing undocumented immigrant students to attend college at in-state tuition

rates. Texas was the first, followed by California, Utah, New York, Washington, Illinois and Oklahoma. In Wisconsin and Maryland, a similar measure was approved in the legislature, but was derailed by a governor's veto.

Federal Legislation

At the federal level, Congress continues to debate the post-secondary future of immigrant students through two proposed bills that would allow undocumented immigrant students to attend their state universities at in-state tuition rates.

Sen. Orrin Hatch of Utah has introduced The Development, Relief, and Education for Alien Minors Act, or DREAM. In the House, U.S. Rep. Chris Cannon of Utah has introduced a similar bill known as the Student Adjustment Act. With revisions to the bills during this shortened session of Congress, Bernstein believes the legislation has a chance of passing if opponents do not keep it from reaching the floor of Congress.

Opponents contend the bills would use taxpayer money to reward illegal behavior. Other critics charge that the bills are being used as a political tool to appeal to immigrant voters.

Supporters argue that DREAM provides educational opportunities for children who did not choose to enter the United States illegally.

"Even if it wasn't in the interest of these kids, it's so much in the interest of us all as taxpayers to be encouraging these kids in every way we can, including with financial incentives, to go to school because of the dividends we reap," Bernstein said.

Opponents of the DREAM Act or in-state tuition for undocumented immigrants, he said, argue that taxpayers shouldn't bear the expense of putting undocumented immigrant students through college.

"But college is such a good investment for taxpayers. It's been proven conclusively that taxpayers in just a few short years make back their investment and after that, it's gravy. Years and years of reduced criminal justice costs, reduced social service costs, and increased taxes through personal income are good arguments for passing this

act," he said. "If you look down the road 10 or 15 years, this will be a huge bonanza for taxpayers. It's the kind of outlay that pays back huge dividends in society."

The immigration debate is also a moral one, said Bernstein.

"It's just the right thing to do. We have to draw a line in the sand and treat people based on their own actions, efforts and abilities and not based on decisions their parents or others have made. That's a bedrock American principle. And it is the crux of what underlies *Brown versus the Board of Education*."

States Debate

The post-secondary future of undocumented students is being debated beyond the halls of the U.S. Capitol. In Virginia, for example, a federal judge ruled that Virginia's colleges and universities may deny admission to illegal immigrants – a ruling that experts said was the first of its kind in the nation.

And for the second year in a row, Kansas lawmakers have debated higher education issues for immigrants seeking post-secondary educational opportunities.

Kansas state Sen. Steve Morris told CSG that this year as well as last, legislators who support in-state tuition rates for undocumented students have been confronted by opponents who feel threatened by the influx of immigrants. "They feel resentment, I think," Morris said. "They are feeling threatened because they're turning into the minority instead of remaining in the majority."

According to the U.S. Census Bureau, while the statewide population in Kansas increased 8.5 percent between 1990 and 2000, the Hispanic population during that decade more than doubled from 93,670 to 188,252. In 1990, Hispanics represented 3.8 percent of the state's population. In 2000, Hispanics were 8.5 percent of the population.

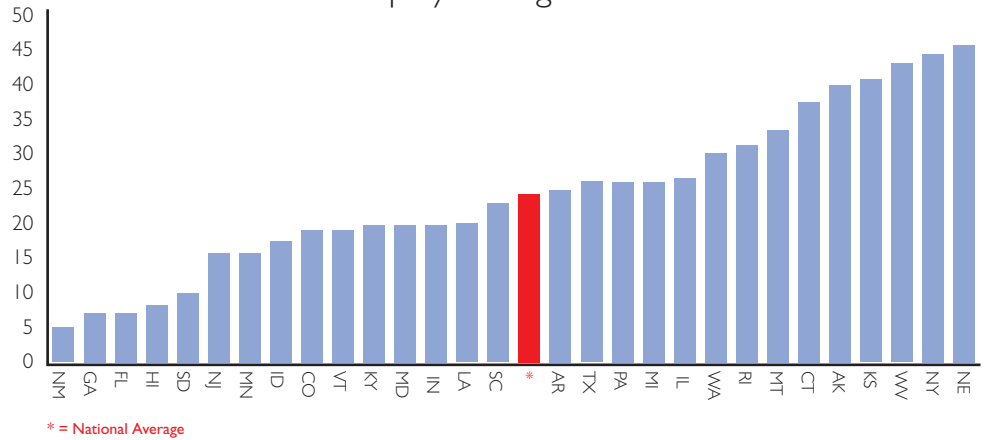
Morris told CSG that the Garden City School District, the largest in his district, has done a good job developing educational policies for immigrants. Even so, he said, the increasing numbers represent new challenges for local schools. "The last three or four kindergarten classes have been 70 to 75 percent Hispanic," Morris said. He is concerned that many of those students will not be in the graduation lines when they reach high school.

Continued on page 38

While these approaches offer viable solutions to the problem, not every state can successfully implement every strategy. For this reason, the survey also asked states to identify the keys to solving or preventing a human capital crisis in state health agencies. Sixteen states identified increasing pay and benefits as a key to solving the worker shortage. Better marketing of public health careers to students in medical fields and other prospective employees was the second most common solution, identified by eight states. Five states noted that the ability to adjust pay scales quickly to attract and retain employees when the market shrinks for particular occupational categories would help the state's recruiting efforts. Eleven state public health agencies considered partnering with various professional educational institutions to design public health programs and curricula. Seven states reported professional training for the current public health workforce as a key to solving a retention problem.

State and local public health infrastructure is the first line of defense against a bioterrorist attack, and an adequate supply of competent health professionals is a vital component of this infrastructure. The survey indicates that states are working on new approaches to public health workforce recruitment and retention in order to maintain a high capacity for health emergency preparedness and response. The benefits of improved state and local

Public Health Employees Eligible for Retirement



public health infrastructure are not limited to the protection against bioterrorism; they include a better response to more common public health crises, such as West Nile virus, SARS and influenza.

TrendsAlert: Public Health Care Worker Shortage explores the trends in public health worker shortages in more detail, and provides a wider overview of public health infrastructures in the states. The report will be available at www.csg.org (keyword: public health worker shortage).

— *Irakli Khodeli is a research assistant at The Council of State Governments.*

Tweaking NCLB Continued from page 24

“Like the rest of the nation, Garden City must improve the graduation rate for its Hispanic student population,” Morris said.

In North Carolina and surrounding Southern states, rural communities have witnessed increased numbers of Hispanic families settling in to work at the poultry and furniture industries as well as in urban areas at minimum-wage, low-skilled jobs. The influx of adult workers during the past 10 years has increased the need for ELL programs for their children. States vary, however, in terms of their legislative provisions and funding for ELL programs, according to an immigration specialist with SERVE, an education organization that advocates improved educational opportunities in the Southeast.

“In the SERVE region, which includes Florida, Georgia, North Carolina, South Carolina, Alabama and Mississippi, the states of Florida, Georgia, and North Carolina seem to offer the most legislative guidance and funding on the state level,”

said Stephanie Humphries, author of a SERVE study on immigration issues in the Southeast.

Some plans are the result of court decisions. “Districts in Florida, for example, submit Limited English Proficiency education plans to the state Department of Education for review, the result of the *LULAC et al. v. State Board of Education* consent decree,” she said.

Humphries, who is a program specialist for reading and school improvement in SERVE’s Greensboro, North Carolina office, said districts in the other SERVE states primarily pursue federal funding and must comply with federal guidelines. “Too, there is often some crossover between federal and state programs,” she said. “For example, although most funding for Alabama’s ELL programs may come through Title III, the state earmarks funds for at-risk students. As a result, some ELL programs may receive state monies if they serve ELLs who are at-risk.”

Humphries said no specific instructional model for ELLs is mandated on the federal level. “This doesn’t mean that parameters aren’t in place,” she said. “Title VI of The Civil Rights Act of 1964, Title III of the No Child Left Behind and court decisions such as *Lau v. Nichols* and *Castañeda v. Pickard* have clarified that programs for ELLs must be based on sound educational theory, adequately supported so that the programs have a realistic chance of success, and periodically evaluated and revised. So, the goals are in place, but states and districts decide how best to meet them.”

The issues of English Language Learners and in-state tuition for undocumented students are just two parts of the complex problems state legislatures face in trying to narrow the achievement gap for all minorities.

— *Charlotte Postlewaite is chief education policy analyst at The Council of State Governments.*