TO: Meredith Miller, US Department of Education  
FROM: Working Group on English Language Learner (ELL) Policy  
DATE: July 31, 2016  
Re: ESEA-ESSA Notice of Proposed Rulemaking, Accountability and State Plans  
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We write in response to the Notice of Proposed Rulemaking regarding the Every Student Succeeds Act (ESSA) accountability and State plans as these pertain to English learners (ELs). The Working Group on ELL Policy consists of researchers with extensive experience in educating EL students and a substantial understanding of the research on strategies for effectively educating this population. We bring the combined knowledge of several leading universities and educational research organizations across the United States (see http://ellpolicy.org/about/).

ESSA offers a significant opportunity for States to develop more nuanced and responsive accountability systems for English learners. However, in order to maximize these potential advances and ensure effective implementation of ESSA, rulemaking must be grounded in the best available research evidence. To that end, we offer the following comments and observations with respect to key proposed regulations in the Notice.

A. Sec 200.13. Long-term goals & measurements of interim progress [§1111(c)(4)(A)]:

1. Regarding long-term goals for English language proficiency: The proposed regulations rightly clarify that States’ long-term goals must include both annual progress toward English language proficiency and actual attainment of English language proficiency for all English learners. This important clarification resolves ambiguity in Title I language, and ensures alignment with the biennial reporting requirements specified in Title III regarding progress toward and attainment of English language proficiency.

2. Regarding the factors that can be considered when setting goals for progress in achieving English language proficiency: The proposed regulations rightly expect States to develop and consistently apply a uniform procedure for setting both long-term goals and measurements of interim progress for all English learners in the State. There is clear research evidence for the proposed requirement that States must consider a student’s ELP level. There is also clear research evidence for the other factors the proposed regulations indicate a State may consider—time in language instruction educational program (LIEP), grade level, age, “Native” (primary or L1) proficiency, and limited/interrupted education. We recommend that ED also allow consideration of an EL student’s disability status. Recent research evidence (Slama, 2014; Thompson, 2015; Umansky & Reardon, 2014) also indicates that EL students with disabilities take longer to attain English language proficiency and exit EL status. We note here the obvious

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1 This document was prepared by Robert Linquanti in consultation with Kenji Hakuta, Diane August, Patricia Gándara, Megan Hopkins, Karen D. Thompson, and Ilana Umansky. See Appendix A. for full group membership.
implication that time frames for ELs to attain English language proficiency will therefore (appropriately) vary based on these characteristics.

In addition to allowing States to consider these student-level factors, we recommend that the regulations also encourage States to consider LIEP goals when setting interim and long-term goals for attaining English language proficiency. Recent longitudinal research (Steele et al., in press; Thompson, 2015; Umansky & Reardon, 2014) provides important evidence that EL students in dual language programs (with the goal of developing biliteracy) on average take longer to attain English language proficiency, exit EL status, and achieve academically in English language arts, but ultimately do so at higher rates than those in other LIEP models. Given this research evidence, and the fact that 22 States to date have adopted the Seal of Biliteracy\(^2\) to support the development of multilingual capacities, we strongly recommend that this program-level factor also be included.

3. **Regarding whether the proposed regulations should specify a maximum State-determined timeline to English language proficiency:** Based on the best available research evidence, we strongly recommend that ED not do this. First, existing research (Hakuta et al., 2000; Cook et al., 2012; Thompson, 2015) estimates time frames generally at 5 to 7 years. However, States have recently implemented much more rigorous college- and career-ready standards and assessments, and are implementing corresponding ELP standards and assessments that reflect much more demanding academic uses of language than those of past ELP standards and assessments. We do not yet know what effect these standards will have on time frames to English language proficiency. Moreover, as noted above, there is important research evidence that ELs in dual language programs take longer but attain English proficiency (and achieve academically in English) at higher rates over the long term. While we believe that Title III’s requirement to report the number and percentage of ELs not attaining English proficiency after five years is a helpful indicator to draw attention to ELs’ ELP progress and attainment, we do not believe current research evidence warrants ED to set a priori any maximum time frame. Indeed, doing so could have a chilling effect on State efforts to promote multilingualism and academic achievement in two or more languages, which can benefit EL students cognitively, educationally, socially, and ultimately economically (Callahan & Gándara, 2014).

**B. Sec 200.14. Accountability indicators: Progress in Achieving English Language Proficiency Indicator [§1111(c)(4)(B)]:**

1. **Regarding the inclusion of ELs in school-level accountability:** We agree with the regulations that the ELP indicator must be based on EL students’ progress and attainment, using the ELP assessment required under §1111(b)(2)(G), in grades 3-8 and

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the State-selected high school grade. However, we recommend the regulations clarify that student ELP assessment results should be aggregated across grades to the school level. ESSA institutes Title I accountability at the school level only, in contrast to the prior ESEA reauthorization (NCLB), which stipulated school and district level accountability. We are deeply concerned that many ELs will disappear from school level Title I accountability due to minimum n-size considerations. (See below.) ESSA regulations should therefore clarify that n-size requirements do not apply at the grade level, but rather at the school level.

C. Sec 200.16. Subgroups of Students [§1111(b) and (c)]:

1. Regarding the inclusion of ELs with disabilities in English language proficiency testing: We agree with the provision in the proposed regulations that would allow States to forgo assessing EL students with disabilities in one or more of the four ELP domains\(^3\) that, in the judgment of the student’s IEP team, are not assessable due to the specific disability, and to calculate an ELP score using the remaining domains. There is empirical research (Cook, 2013) that illustrates methodologies for calculating an ELP score missing one or more ELP domains, and ED should support further research in this area.

2. Regarding the inclusion of recently-arrived ELs in assessments: We also agree with the provision that would allow States to use either or both options specified in ESSA (§1111(b)(3)(A)) for including the assessment results of recently arrived ELs, so long as they establish and apply a clear uniform procedure statewide. Research supports the proposed requirement that the uniform procedure must take into account a recently arrived EL’s ELP level, and may consider other relevant student-level characteristics, as enumerated in Comment A.2 above.

We recommend ED also signal that recently arrived ELs with lower levels of initial English proficiency upon arrival should be assessed, as stated in ESSA, “in the language and form most likely to yield accurate data on what such students know and can do in academic content areas” [§1111(b)(2)(B)(vii)(III)]. The use of primary language reading/language arts and mathematics assessments is fully supported in ESSA Title I, and States should be encouraged (if not required) to utilize these results in accountability, when evidence suggests that these assessments would yield more valid and reliable information for educational decision-making and accountability purposes.

3. Regarding the inclusion of former ELs in subgroup reporting: Proposed regulations for ESSA Title I accountability would allow States to include the results of former ELs in EL subgroup reporting and accountability for up to four years after they exit EL status, but only for the purpose of calculating and reporting on the academic achievement indicator. That is, the regulations would prohibit States from including these former ELs in graduation rate calculations, should they have exited EL status before entering high

\(^3\) Listening, speaking, reading, and writing.
school. Much recent research and policy analysis has highlighted the distorting effect on accountability outcomes of a continually-changing EL subgroup, and of not fully and fairly accounting for all students that entered US schools as English learners (e.g., Hopkins et al., 2013; Sanders et al., 2013, Working Group on ELL Policy, 2011). The ESSA provision to allow States to include former EL results for four years (vs. two years under NCLB) represents a significant positive step toward addressing this distorting effect. We also note that Title III biennial reporting requirements require Title III-funded LEAs to report on the subsequent academic performance of former ELs for each of four years after exiting EL status.

We point out that this prohibition, if enacted, will create an inconsistency across indicators in how the EL subgroup is defined; will very likely underestimate EL graduation rate outcomes relative to academic performance results of ELs in grades 3-8 and the State-selected high school grade; and could very likely lead to misidentification of high schools in the annual meaningful differentiation of high school performance, based on the widely varying characteristics of students entering grade 9 as English learners. To avoid these effects, we recommend that ED allow former EL students previously exited in the prior four years to be part of the grade 9 EL subgroup cohort for graduation rate calculations, as they are for other school-level, annual performance calculations of the EL subgroup.

Allowing States to include the results of former ELs in EL subgroup only for the academic achievement indicator would also generate problematic discrepancies between school indicators for academic achievement and those for English Language Proficiency, due to n-size considerations. For example, consider a school’s EL subgroup that just meets the State’s minimum n-size for the academic achievement indicator and the EL subgroup includes a few former ELs. Since exited ELs do not have ELP assessment results, the n-size for the English Language Proficiency indicator would drop below the minimum. This in turn would cause the English Language Proficiency indicator to be dropped – even for those current ELs with ELP assessment results – and increase proportionately the weight of the other indicators (including academic achievement) for current ELs. This would effectively suppress ELP assessment information relative to academic achievement information for EL students in such schools. Such an outcome undermines the intent of ESSA Title I – to include ELP assessment results for all ELs, and ensure these results are weighted properly in accountability for the EL subgroup.

In order to resolve this asymmetry and ensure inclusion of all current ELs’ ELP assessment results in the Title I accountability system, we recommend that States be allowed to propose procedures to equalize the n-size for ELs across indicators by including the same former EL students used in the academic achievement indicator to

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4 This would include those ELs exited in grades 5 through 8.
be used in the English Language Proficiency indicator. This could be accomplished by (1) using their latest ELP score recorded in the year when they were exited; or (2) using statistical procedures to impute the ELP assessment score for exited students based on their latest available ELP score and their current ELA and Math achievement scores. Such imputation is justified given the empirically-established relationships between English Language Proficiency test level and academic achievement test performance (Cook et al., 2012).

D. Sec 299.19(c)(3). Standardized Statewide Entrance and Exit Procedures for English Learners [§3113(b)(2)]:

1. *Regarding statewide EL entrance and exit procedures:* We wholly agree with ED’s proposed regulation to require that standardized statewide EL entrance and exit procedures required under ESSA §3113(b)(2) include uniform criteria that are applied statewide. Much recent research has called attention to the deeply problematic effects of widely varying EL entry and exit criteria and practices employed across schools and districts within a State for determining which students are English learners (National Research Council, 2011). Such wide variation in criteria results in students receiving inconsistent and potentially inappropriate services across schools and districts within a State. Indeed, state and local educators, EL researchers, technical assistance providers, policy analysts, and other stakeholders have undertaken substantial efforts in recent years to help States define and standardize procedures and criteria at key stages of EL status, including identifying potential ELs; classifying ELs; determining English-proficient status; and reclassifying ELs (see Linquanti et al., 2016 for collected guidance related to these efforts).

2. *Regarding a “local option” for statewide standardized English learner entry and exit procedures and criteria:* We also agree with ED’s proposed regulation to prohibit a “local option,” so long as it clarifies that this term refers to local criteria that are inconsistent statewide. This clarification is important, because States should have the option to define statewide, standardized criteria and procedures that meaningfully involve local educators – those closest to the EL student – in the process of identifying, classifying, and/or reclassifying ELs.

For example, Linquanti and Cook (2015) elaborate on recommendations from a national working session that allow for use of a standardized, statewide classroom-based language use observation protocol that would yield evidence complementary to State ELP assessment results for EL reclassification decisions. Using statewide calibrated tools and procedures, educators can make consistent judgments of EL students’ interactive and collaborative language uses, which are not well measured by annual, large-scale ELP assessments (see Molle et al., in press). Indeed, professional standards of educational and psychological testing (APA/AERA/NCME, 2014) recommend that highly
consequential decisions such as EL reclassification not be made solely on the basis of a single test score, and that additional relevant information should be considered. Such complementary evidence can meet the standard of being “objective, valid, and reliable criteria” if the state supports development, training, calibration, and monitoring efforts.

3. Regarding the use of content assessments in exit criteria: We agree with ED’s proposed regulation to clarify that scores on academic content assessments cannot be explicitly included as part of the State’s EL exit criteria. Academic content assessments are neither designed nor intended to measure student’s English language proficiency. They are simply not valid for making inferences about student’s English language proficiency (Abedi, 2008).

That said, it is important for ED to emphasize related requirements in the regulations to address legitimate concerns about potentially flawed ELP assessments and low English-proficient cut scores leading to premature exit from EL status. First, it will be critical for ED, via Sec 299.16 (Challenging Academic Standards and Academic Assessments) to have States provide sufficient evidence in Title I peer review that their adopted ELP standards are sufficiently rigorous (i.e., correspond to the language demands found in State academic content standards) to meet the expectations of ESSA § 1111(b)(1)(F), and that their ELP assessments are properly aligned to those ELP standards.

Second, recent research has demonstrated multiple, convergent analytical methods that allow States to utilize the scores of ELs on academic content assessments when setting the English-proficient performance standard on the State ELP test (Cook et al., 2012). In this specific sense, States can and should incorporate EL performance information from academic content assessments when used to inform policy decisions on where to set the English-proficient criterion on the State ELP test.

4. Regarding the use of multiple sources of evidence for reclassification: ED should allow States to propose methods of combining two or more sources of “objective, valid, and reliable” ELP evidence in determining whether an EL student has sufficient English language proficiency to exit EL status. With respect to combining multiple sources of ELP evidence, we are concerned about the proposed regulation’s intention to categorically require a score of proficient on the State’s annual ELP assessment in order for an EL to exit EL status. Large-scale annual assessments, like all assessments, are subject to measurement error. Just as the professional standards of educational and psychological testing warn against using a single measure, they also advise being aware of the conditional standard error of measurement around important cutpoints for educational decision-making. We therefore recommend that ED allow States to establish EL exit procedures and criteria that are judiciously compensatory with conjunctive minimums, and to use, on a very limited basis, the English language arts performance score – so long as that score is at the proficient performance standard for the student’s current
grade level – as a potentially “corrective criterion” for ambiguous or borderline cases. That is, only an ELA grade-level-proficient performance result could be used to resolve borderline-ELP-result cases in favor of exiting an EL student. Moreover, no academic content test result could be used to retain in EL status a student that has met the standardized, statewide ELP performance criteria. This has implications for ED’s proposal on harmonizing EL status in Title I and Title III, discussed next.

5. Regarding the application of exit criteria for Title I subgroup and Title III services: ED proposes to clarify that the State’s exit criteria must be applied to both the Title I subgroup and Title III services, such that a student who exits EL status based on the statewide standardized exit criteria must be considered to have exited EL status for both Title I and Title III purposes. We are concerned that this stipulation could unintentionally discourage States from employing multiple exit criteria (discussed immediately above), which can be justified on both psychometric and educational grounds, and simply use the State ELP test score as a single criterion. ED regulations should not discourage States from using two or more ELP criteria that are objective, valid, and reliable in making important educational decisions for ELs. While there should be very few instances of students meeting the English-proficient criterion on the State’s ELP test while not meeting one or more other criteria of English language proficiency, ED should allow for this possibility.

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5 See Linquanti & Cook, 2015, pp. 19-22 for discussion and illustration.
References


Appendix A.

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