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June 23, 2008

Mr. Zollie Stevenson, Jr.
Director, Student Achievement and School Accountability Programs
U.S. Department of Education
400 Maryland Ave., SW
Washington, DC 20202

Re: Docket ID ED-2008-OESE-0003

Dear Mr. Stevenson:

On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, we submit these comments and recommendations regarding the Department of Education's Notice of Proposed Rulemaking (NPRM) issued on April 23, 2008. LCCR appreciates that the Department is trying to move ahead with improvements to the implementation of the No Child Left Behind Act (NCLB), particularly in light of the fact that the 110th Congress has not reauthorized the Elementary and Secondary Education Act (ESEA) on schedule. LCCR has repeatedly urged Congress to reauthorize ESEA to improve and strengthen the law, as well as to ensure that it is adequately funded.

On behalf of the coalition, LCCR submitted a letter to the joint hearing of the House and Senate education committees on March 13, 2007 outlining our policy priorities for the ESEA reauthorization; that letter, along with the hearing testimony of Wade Henderson, LCCR president and CEO, are attached to these comments. As they did in our specific recommendations to Congress, LCCR's core education principles help to shape our recommendations here; quoting from that letter:

LCCR believes that access to a high quality education is a fundamental civil right for all children and that several core principles must be adhered to in federal education policy. First, federal policy must be designed to raise academic standards. Second, those high standards must apply equally to all students, of all backgrounds. Third, schools should be held accountable for meeting academic standards. Fourth, there should be good quality assessments that are linked to academic standards. Finally, federal and state governments must ensure that schools, particularly those in neighborhoods of concentrated poverty, have the resources they need to give all children the chance to meet those standards.

While some of those principles may be beyond the reach of the Department in a rulemaking, particularly ensuring that adequate resources are available to schools remains the responsibility of Congress and the states, LCCR is pleased that through this NPRM the Department is acting on a number of the recommendations we made. Of particular

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note, the focus of this rulemaking on the standardizing of graduation rate reporting, the use of a rate similar to the four-year model used in the National Governors Association (NGA) Compact, and the disaggregation of graduation rates by subgroup are all high priorities of the civil rights community and were recommended in our policy letter to Congress. Still, even in implementing authority that exists under the current statute, the uncertain legislative climate for reauthorization of ESEA highlights the need for careful deliberation even while pursuing the same goals we recommended to Congress.

With that note of caution, LCCR offers the following specific comments and recommendations on the provisions of the NPRM:

Section 200.19(a)(1) – Other Academic Indicators

The NPRM notes that under ESEA §1111(b)(2)(C) & (D), state definitions of Adequate Yearly Progress (AYP) are already required to include graduation rates as the other academic indicator for high schools. To date, that requirement has carried little meaning in the civil rights community because graduation rate reporting has been wildly inconsistent and grossly inflated for many years, effectively hiding the true extent of the dropout crisis afflicting minority and low-income communities. Because current regulations do not require the use of a disaggregated graduation rate as the other academic indicator, the provision has not been a meaningful factor in driving either data collection or accountability for low-income, minority, language minority, or disabled students.

In light of those problems, in our March 13, 2007 coalition policy letter, LCCR called on Congress to take the following actions:

- Require graduation rate reporting that is disaggregated by subgroup and in a format that can be fully cross-tabulated.
- Require graduation data based on the year-to-year promotion rate method of accounting for all students as they progress each year beginning in ninth grade.
- Use graduation rates that have clear and consistent national definitions, and are reported as 4-year and 5-year (and possibly others) completion rates.
- Prohibit schools from exempting students who have been incarcerated from their graduation rate calculation, out of concern for the growing problem of the school-to-prison pipeline.

As proposed, §200.19(a)(1) addresses some of these concerns. Of the greatest importance to the civil rights community is the use of a graduation rate that accounts for all children beginning when they enter ninth grade, without exception, and is fully disaggregated.

Our understanding of the NGA rate that is endorsed in the regulation's preamble, however, is that it would allow states to exempt students who are lost to prison from graduation rate calculations. While we understand and share the concern of those who feel the school should not



be blamed for a child who is in prison, we are troubled by the possible unintended consequences that approach would have for at risk students. If this regulation works as intended to curtail the “push out” problem, closing off whatever incentive the rare “bad actor” might feel to raise test scores by pushing students out of school, leaving only an exception for prison would create a dangerous problem.

The extreme racial and ethnic disparities that plague the juvenile justice system at all levels are also evident in school disciplinary actions. Creating even the smallest extra incentive to “solve” a school discipline problem by calling the police and instituting criminal charges would set a dangerous precedent and work counter to the regulation’s intent of encouraging schools to keep students enrolled and on track to graduation.

Despite the apparent embrace of the NGA rate, the actual regulatory text of the NPRM defining the allowable reasons a school or local educational agency (LEA) can remove students from the “cohort,” or denominator of the graduation rate calculation, §200.19(a)(1)(i)(A)(2), provides only two reasons: (1) confirmed transfer to “another school, LEA, or other educational program that culminates in the award of a regular high school diploma” and (2) death.

Recommendation: The final rule should clarify that all children must be fully accounted for. To address concerns about the fairness to individual schools, LCCR proposes using the same mechanism provided for in §200.19(a)(1)(i)(C)(2) to allow a state to propose for the Secretary’s approval any plan for removing incarcerated children from school cohorts. In order to be considered for approval, a plan would have to include both evidence that the state had a legitimate plan in place to educate children in prison to the same standard required under §200.19(a)(1)(i)(B) and a full accounting of every child removed from any school’s cohort. The state would then continue to be accountable for all of these students, both as a whole and disaggregated by subgroups.

Recommendation: In requiring the creation of new data sets of disaggregated graduation data, the Department should avoid an oversight made in the past and ensure that the data is reported and maintained in a format that is fully cross-tabulated from the outset. LCCR also urges the Department to include, for reporting purposes only and not as another AYP category, gender disaggregated data. Having all of the AYP and gender data fully cross-tabulated will give educators, school leaders, and researchers the ability to identify problems, tailor solutions, and determine applicable best practices to help at-risk students.

Cross-tabulating data in this way is no less important for targeting interventions to improve academic achievement at all levels and should be implemented for proficiency test data using both gender and all AYP subgroups.

As part of addressing gender issues in graduation data reporting, the Department should examine the effects of pregnancy and parenting on graduation. Research has shown that at least one-third of female students and one-fifth of male students report that becoming a parent was a *major* factor in their decision to drop out of high school, while nearly one-half of female students said it was a factor. To determine the full extent of the problem, the Department should promulgate regulations requiring schools to track the graduation rates of pregnant and parenting students (for



reporting purposes only, not for AYP), to the extent that schools know which students are pregnant or parenting. We recommend setting a minimum subgroup size for school districts rather than individual schools to ensure privacy and facilitate the sharing of relevant information.

Section 200.19(e)(1) – Disaggregation of Data for State Report Cards

In §200.19(e)(1), the NPRM incorrectly conflates a regulatory requirement for the disaggregation of subgroups for AYP purposes with a statutory requirement for more detailed disaggregation of data for reporting purposes. The regulatory requirement comes from §200.13(b)(7)(ii), which enumerates the subgroups for AYP accountability as being “economically disadvantaged students; students from major racial and ethnic groups; students with disabilities as defined in section 9101(5) of the Act; and students with limited English proficiency as defined in section 9101(25) of the Act.” The statutory requirement is found in the ESEA at §1111(h)(1)(C)(i), which lists the disaggregation categories to be included in a state’s annual report card. The statute includes all of the AYP categories, but also includes both gender and migratory status as mandatory reporting requirements at the state level.

Recommendation: It is beyond the scope of the Department’s rulemaking authority to remove the statutory requirement of gender and migratory status reporting at the state level. The regulation must be clarified to separate the AYP and reporting requirements to resolve this conflict.

Section 200.19(a)(1)(i) – Transitional Use of an Averaged Freshman Graduation Rate

The NPRM proposes an entirely new and temporary measure called an Averaged Freshman Graduation Rate (AFGR) for states that are not ready to switch to the NGA rate immediately. Under §200.19(a)(1)(i), states could use AFGR through the 2011-12 school year, after which they would have to use the NGA rate and begin calculating their graduation rates in accordance with the requirements of §200.19(a)(1). The AFGR would be calculated by dividing the number of graduates by the “averaged” size of the school’s freshman class from four years earlier. The averaged size of the freshman class would be determined by averaging the size of that ninth grade class with the size of the previous year’s eighth grade class and the following year’s tenth grade class, unless the school or LEA does not have an eighth grade, in which case it would just be averaged with the tenth grade class.

There are several problems with using the AFGR, particularly doing so as a transitional rate. First and foremost, this is exactly the type of temporary measure that threatens to place the greatest burden on school systems while providing the least tangible or lasting benefit for children. There are real costs inherent in the collection of data and retraining of personnel and that time could be better spent working toward the transition to a final system, rather than changing the system twice over the course of five years.

Second, while AFGR is certainly an informative measure when looking at large-scale aggregated data for states or large school districts, it is of limited use on a school level, especially in high-poverty schools that tend to have much higher levels of student mobility. In addition to student mobility, most high schools do not have eighth grades to use for the average, meaning that only



tenth grade would be averaged in, which would build one year's worth of dropouts into the denominator of the school's graduation rate calculation.

Finally, there has been significant progress over the last several years toward the universal use of longitudinal data systems capable of tracking students as they progress through high school toward graduation, with the majority of states already fully capable of doing so. That process has been helped greatly by the leadership of the National Governors Association, so it is worth noting here that in its comments on the NPRM, the NGA stated that "...an interim high school graduation rate can be counterproductive to the goal of adopting the NGA Graduation Rate in a timely, cost effective manner and may be confusing to the public."

Recommendation: We understand that the Department intended to build flexibility into the regulation by creating an interim rate, however LCCR strongly recommends against using the AFGR for the reasons outlined above. Instead, we believe the desired flexibility can be achieved much more simply while reaching the ultimate goal more quickly.

LCCR proposes that the Secretary move up the timetable for compliance with §200.19(a)(1) to the 2010-11 school year. Any state that cannot immediately implement the NGA rate should demonstrate to the Secretary through their plans why they do not have the data system capacity to do so, what changes will need to be made to their systems, what interim rate the state will use to measure graduation rates, and the timeframe in which those changes will be made. In no case should that timeframe extend beyond the 2012-13 deadline in the NPRM.

Given that the majority of states are already capable of implementing the NGA Compact and many more are close to being ready, this approach would build on the gains that have already been made while allowing a more flexible approach for individual states that are not ready to make the switch yet.

Section 200.19(d)(1) – Graduation Rate Goals and Continuous and Substantial Improvement Measures

The NPRM does not set any type of goal, floor, growth rate, or standard of any kind for graduation rates. Instead, in §200.19(d)(1) the proposed regulation requires states to submit their own goals and to demonstrate their plan for making "continuous and substantial improvement" toward meeting and exceeding that goal. The NPRM then directs states to create their own definition of continuous and substantial improvement. This is a somewhat disappointing formulation.

LCCR is mindful that there are competing concerns at work here. The current under use of graduation rate measures in the NCLB's accountability framework have made it easier to sweep the problem under the rug, and a strong accountability framework with high standards for the achievement of all children is essential to solving the problem. However, we realize that this regulation is not a reauthorization of the ESEA, nor is it the enactment of new high school reform legislation, or an education appropriations bill. There are obviously limits to the effectiveness this regulation can have without such legislation to support it.



Recommendation: Regardless of whether the Secretary believes that either the Department's statutory authority or practical ability is limited to the provisions of §200.19(d)(1), LCCR recommends that this section focus on requiring a robust public process for the state to go through in order to set its graduation rate goal and growth rate. States should be required to hold public meetings to not just inform parents of the state's proposed graduation rate goal, definition of continuous and substantial improvement, and plan to meet those targets, but to engage parents, educators, and the public in the process of developing their plans. Public meetings should be held within the jurisdiction of every LEA; be accessible for limited English speakers and individuals with disabilities; be well advertised in advance, including through both schools and, where available, minority and alternative language media outlets. The Secretary should also require evidence that in creating their plans, states included the views of experts on the issues of students with the highest risk profiles for dropping out, including racial, ethnic, and language minorities, children from low-income families and neighborhoods of concentrated poverty, students with disabilities, pregnant or parenting students, and students whose families move frequently during their school years.

Section 200.11(c) – Participation in NAEP

Under the proposed rule, state and LEA report cards would be revised to include the latest available state reading and mathematics NAEP scores, including both aggregate and disaggregated statewide data.

Recommendation: LCCR supports this requirement, particularly the use of disaggregated data, because we believe that NAEP data is an important tool for helping the public to evaluate and compare data across states. NAEP data on state report cards should prove to be a particularly useful tool for parents who wish to learn more about how the rigor of their state's standards and assessments might compare to other states and national benchmarks.

When placing this new information on report cards however, it will also be important to clarify that there are limits to the direct comparison that can be made between NAEP and state test scores. In simple and clear terms – and, as with all other information, in accessible languages – the differences between the tests and scores should be explained. This is particularly important on the LEA report card, which will have to include a clear explanation that the NAEP results are based on statewide samples, and not necessarily based on the test results of the same students whose results are reported on the LEA's state-based test data.

Section 200.47 – SEA Responsibilities for Supplemental Educational Services

Section 200.47 contains a list of state responsibilities for monitoring and evaluating SES providers, all of which are welcome and overdue. As part of the process of certifying providers and ensuring an adequate supply of providers, the SEA should also take responsibility for ensuring that in every area of need throughout the state there is a sufficient supply of providers to meet the needs of all children entitled to services, paying particular attention to the needs of children with disabilities and English language learners.



Recommendation: If the state cannot ensure the full availability of services for all special needs children within a district and the LEA has a demonstrated capacity and willingness to provide SES services to those students, it should be permitted to participate as a provider.

States also have a responsibility to ensure that all SES providers deliver services in a non-discriminatory fashion. That obligation does not stop with the states. Through non-regulatory guidance issued on June 13, 2005, the Department seemed to correctly identify the obligation of supplemental service providers to abide by all federal, state, and local civil rights laws. However in the very next paragraph of the guidance, the Department effectively dismissed the obligation to abide by Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 by declaring that SES providers were not recipients of federal financial assistance. The Department gave no rationale for deeming the funds received through Title I for SES services insufficient to trigger the responsibilities of being a federal funding recipient, while explaining that if the provider received federal funds for something other than the Title I SES services, it would be a federal funding recipient and thus subject to the laws.

Recommendation: The distinction is illogical and violates the clear intent of Congress when it included section 9534 in ESEA, and the guidance should be reversed immediately.

Section 200.7 – Disaggregation of Data

In Section 200.7 of the NPRM, the Department seeks to clarify policy on the use of minimum N-sizes for determining AYP at the LEA and school levels, and for reporting of disaggregated results by states and LEAs. The NPRM proposes in Section 200.7(a)(2)(i)(B) to require states to ensure that their N-sizes result in the inclusion of all subgroups “to the maximum extent practicable.” Section 200.7(a)(2)(ii) of the NPRM would require states to amend their accountability workbooks to describe how they meet the above-mentioned requirement, and how other areas of their AYP definition affect the statistical reliability of the data used to determine AYP, and to provide information on the number and percentage of students and subgroups not included in AYP determinations at the school level. Section 200.7(a)(2)(iii) of the NPRM would require states to submit their amended accountability workbooks for technical assistance and peer review on its minimum N-size.

Recommendation: LCCR supports the spirit of the proposed regulations, which are intended to increase the inclusion of all subgroups in AYP determinations and in reporting of data. As the NPRM describes, states are setting minimum N-sizes at various levels, and it is clear that millions of students are being excluded from AYP determinations and minority students are more likely to have their scores excluded from AYP determinations. In particular, the achievement levels of Asian subgroups can be masked by N-sizes set too high to capture the nuances within the Asian community. As such, regulation in this area is necessary for proper implementation of the law.

However, LCCR is disappointed that the NPRM does not provide a stronger assurance that all subgroups, including minority students, students with disabilities, and ELLs are included in AYP determinations. This can be done with more rigorous reviews of state accountability



workbooks. Specifically, we bring to the Department's attention the fact that Maryland has had a minimum N-size of five for many years. In addition, LCCR recommends that amendments to state accountability workbooks be reviewed carefully to ensure that all students are included, and that the peer review process associated with these proposed regulations focus on increasing the number of these students included in AYP determinations. Finally, minimum N-size is partly about science, but also about public accountability. Simply requiring states to report the number of students excluded from accountability in their workbooks denies the public important information about whether or not schools are addressing the needs of all students. LCCR recommends requiring public reporting of the number of students excluded from AYP determinations by subgroups.

Additional Issue - Differentiated Consequences

Finally, LCCR has consistently supported incorporating differentiated consequences into the reauthorization of ESEA. Absent a reauthorization, we are inclined to support careful and deliberate efforts by the Department to conduct pilot projects in selected states. It is unclear from the NPRM whether the Department has given any thought to how differentiated consequences would work in the context of a high school that met its proficiency test targets but failed to make AYP because it missed graduation targets. In light of the fact that this rule contemplates graduation rates becoming part of AYP, we would urge the Department to reexamine appropriate remedies for high schools that fail to make AYP and ensure that in states where differentiated consequences models will be piloted, full consideration will be given to alternative interventions to help struggling high schools raise their graduation rates.

Conclusion

LCCR believes that access to a high quality public education is a fundamental civil right for all children. Since even before *Brown v. Board of Education*, it has been clear that federal leadership is absolutely essential in making that right a reality. We hope that the Department will capitalize on this opportunity to improve the implementation of No Child Left Behind and help to create a positive environment for the debate around the reauthorization of ESEA in the next Congress. If we can be of further assistance, please contact David Goldberg, senior counsel and senior policy analyst, at (202) 466-0087 or Goldberg@civilrights.org, if you would like to discuss these comments or other education policy issues.

Sincerely,

Wade Henderson
President and CEO

Nancy Zirkin
Executive Vice President

Attachments (2)



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March 13, 2007

Reauthorize the No Child Left Behind Act with More Funding, Better Enforcement, and Additional Supports for Struggling Schools

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Karen K. Narasaki
Asian American Justice Center

PRESIDENT & CEO

Wade J. Henderson

Dear Chairman Kennedy and Chairman Miller:

On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, with nearly 200 member organizations, we are writing to express our priorities for the reauthorization of the No Child Left Behind Act (NCLB). While it has been a controversial law, NCLB's goal of educating all children, regardless of race, gender, disability, language or economic status, is laudable. LCCR is committed to strengthening implementation and enforcement of NCLB, as well as working toward improvements in the statute and significantly overdue increases in funding.

LCCR believes that access to a high quality education is a fundamental civil right for all children and that several core principles must be adhered to in federal education policy. First, federal policy must be designed to raise academic standards. Second, those high standards must apply equally to all students, of all backgrounds. Third, schools should be held accountable for meeting academic standards. Fourth, there should be good quality assessments that are linked to academic standards. Finally, federal and state governments must ensure that schools, particularly those in neighborhoods of concentrated poverty, have the resources they need to give all children the chance to meet those standards.

When NCLB was passed, its ambitious goals were accompanied by ambitious funding authorization levels and extensive promises from the administration and Congress to fund the law's programs. Of great importance, the most targeted part of the Title I formula was funded for the first time following the passage of NCLB, resulting in significant increases in federal funds for districts with the highest concentrations of students from low income families. While there was also a substantial overall first-year increase over pre-NCLB federal education funding levels, funding has fallen far short of the law's authorized levels. The cumulative funding shortfall is already over \$56 billion and one conservative estimate of President Bush's FY 08 budget request places it \$14.8 billion below a projected figure based on the current NCLB's authorization levels. If this Congress is serious about education reform, it must prioritize education spending.

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NCLB Can Do More to Raise State Standards and Align Standards with Curricula

At its core, NCLB depends on state standards and state definitions of student proficiency at meeting those standards, and ultimately takes on faith that schools and school districts will adequately align their curricula with the state standards and provide all children the opportunity to meet the standards. Experience has now shown that in too many places, standards are not high enough, some states are setting the bar for proficiency too low, and curricula, standards, and assessments are not adequately aligned to give all students – and their teachers – a fair chance to meet the standards. In some schools, particularly those with extreme poverty concentration, where many minority students are enrolled, children are not provided with a rich challenging curriculum that is aligned to the standards. As a consequence, they may be tested on material that they have had no actual opportunity to learn. LCCR believes there are many areas where NCLB can be strengthened to require more front end planning by state and local education agencies, including:

- Section 1111(b) should adopt a mechanism to ensure that state academic and proficiency standards are subject to review to ensure that both are sufficiently rigorous to keep students on track for on-time graduation from high school and entry into postsecondary education or the workforce.
- There should be dedicated funding for voluntary state consortia designed to pool expertise and resources to raise state standards. Access to this additional pool of grant funding should come with additional oversight from the Department of Education.
- Recipients of Title I funding should be required to ensure that curriculum in Title I schools is aligned with state standards. Specifically, sections 1111 and 1112 should be amended to require that state education agencies (SEAs) and local education agencies (LEAs), respectively, describe in their Title I plans the concrete steps they will take to ensure this alignment occurs and is carried out in each Title I school. These new provisions should be accompanied by guidance from the Department on what constitutes proper alignment and by dedicated funding for professional development to train staff throughout the educational system on how to do it.

NCLB Can Do More to Improve Assessments

Assessments play a crucial role in NCLB and their results have high stakes consequences for schools, educators, students, and parents. NCLB depends on reliable assessment data for its accountability system. States bear the primary responsibility for assessments and more should be done to ensure that states do not cut corners and that assessments are truly aligned with standards. Unfortunately, the federal government has done the bare minimum required under the law to fund assessments, appropriating only \$2.34 billion during the first six years of NCLB. According to a study by the GAO, it would have cost an additional \$3 billion to fund the type of blended multiple choice and constructed response system many experts believe is necessary for an accurate in-depth measure of student learning. LCCR believes NCLB can improve assessments and build greater public understanding and support for the accountability system by:



- Substantially increasing funding for the development of better assessments in reading/language arts and mathematics and of new assessments required under the law in science, including subsidizing the development of constructed response testing.
- Dedicating funding for professional development targeted toward assessment literacy for parents and educators to ensure that they understand the process and development of assessments and how they relate to the standards and curricula.
- Requiring that information explaining the assessments and how the data will be used, as well as the local education agency report cards, be distributed to parents in multiple media, formats accessible to the lay person, and in alternative languages.
- Promoting parental involvement through inclusion in sections 2113 and 2123 of funding for professional development for educators and principals, respectively, on effective parental and family communications and engagement strategies.

Building Public Support for School Interventions that Will Help Struggling Schools

LCCR is committed to NCLB's goal of supporting students in struggling schools. We hope that with a renewed emphasis on accountability and funding, some additional supports, and refinements to improve implementation, schools in need of improvement can be turned around. LCCR believes NCLB should be amended to:

- Permit LEAs to continue to provide interventions and support to a school for one additional year after that school has exited In Need of Improvement status while the LEA reviews the effectiveness of the measures and plans for how to maintain the gains. The interventions that can be continued should include the full remedies allowed by the statute, including school choice and supplemental education services (SES), and all in-school interventions such as professional development.
- Require states to evaluate the quality and effectiveness of their SES providers and ensure that providers are serving the full range of students, including English language learners (ELLs) and students with disabilities.
- Allow the Secretary to grant waivers, on a case-by-case basis, enabling districts in need of improvement to become certified as SES providers if they can demonstrate their capacity to provide effective services.
- Require that teachers in schools in need of improvement have data reports on their incoming students prior to the start of the academic year so that they have a reasonable opportunity to tailor instruction to the academic strengths and weaknesses of their students.
- Ensure that teachers and parents are fully included in all stages of the development and



implementation of the school improvement plan, which should include access to professional development for improving knowledge and skills on data use, selecting effective programs and curricula, and developing school-based leadership for school reform.

- Reverse the Department's assertion that SES providers are not recipients of federal funds, and therefore not directly subject to several federal civil rights laws, including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

Updating the Calculation of Adequate Yearly Progress through the Inclusion of Growth Models

The fundamental task of all schools and teachers is ensuring the academic success of their students. When students begin the year at grade-level, or proficient in NCLB terms, the relevant growth is just one academic year to stay at grade-level and proficient for the next year. But, NCLB data has given us bracing and undeniable evidence of how far behind so many of our students are. To bring 100 percent of those children up to grade-level proficiency, NCLB now seeks to hold schools accountable for much more than just regular annual growth. In that context, giving schools credit toward meeting their adequate yearly progress (AYP) requirements for an accelerated growth trajectory makes sense and LCCR supports it, however does so with the following qualifications:

- No growth model should be implemented without a robust data system in place capable of reliably tracking individual students from year to year.
- For English language learners, evidence suggests rapid initial growth that corresponds to the initial period of language acquisition, but that initial growth cannot be used for the basis of a projection for sustained subject matter content growth. At this time, there does not appear to be any viable growth model available for ELL students. The statute should require that the Department carefully scrutinize any state proposal for how it plans to account for ELL students within a growth model.

Educational Services and Assessments Must be Improved for English Language Learners

Students who are still learning English have been poorly served by the educational system for far too long. NCLB's disaggregated data is helping to highlight the gross contours of the problem, but is still not giving a very clear picture of it or doing enough to solve the disparities. Better communication and outreach to parents in accessible languages, higher quality alternative language assessments, and equal access to supplemental services for ELLs are all necessary. LCCR does not support additional exemptions of ELLs from Title I assessments beyond the current one-year exemption in reading/language arts for newly-arrived ELLs. LCCR believes that NCLB should be amended to:

- Establish a separate funding stream to ensure the development of appropriate academic



assessments for ELLs. Priority should be given to states with the highest numbers of ELLs.

- Require that states with significant ELL populations from a single language group develop valid and reliable content assessments designed specifically for that language group.
- Require SEAs to certify that there are SES providers on their providers list with demonstrable capacity in meeting the educational needs, including language acquisition needs, of ELLs. SEAs must also ensure that appropriate SES providers operate in locations with high ELL populations.
- Require SEAs and LEAs to undertake linguistically and culturally sensitive outreach (including partnering with community-based organizations) to notify students and parents of student eligibility for SES and/or school choice.
- Require that schools, in calculating AYP, include in the limited-English-proficient (LEP) category: 1) current ELLs; and 2) former ELLs who have exited the LEP category within the last two years.
- Require, for the purpose of public reporting of student academic performance, that the LEP category be disaggregated into the following:
 - 1) LEP students who enter the U.S. school system at 9th grade or above;
 - 2) students who have exited the LEP category within the last two years; and
 - 3) recent arrivals who are ELLs who have been in the U.S. school system for less than 12 months.
- Limit the ability of schools and school districts to obscure the failure to reach ELL students (or other subgroups) through large “N-size” statistical cut-offs. N-sizes should be consistent for all AYP subgroups within a district or school.

Federal Education Law Should Create Meaningful Graduation Rate Reporting and Help Schools Reduce Dropout Rates

High school graduation is a minimal qualification for economic opportunity, yet it is an opportunity that is rapidly slipping away from as many as half of African-American, Latino, and Native American children, and a quarter of white children. Students with disabilities, low-income students, language minority students, and students from some groups within the Asian Pacific Islander community are also graduating at alarmingly low rates. Inconsistent – and often deliberately misleading – school reporting of official dropout rates has hidden the extent of the problem for too long and there are reasons to be concerned that increased accountability for test scores may create additional pressure to “push out” more students. LCCR believes that NCLB should be amended to:



- Require graduation rate reporting that is disaggregated by subgroup and in a format that can be fully cross-tabulated.
- Require graduation data based on the year-to-year promotion rate method of accounting for all students as they progress each year beginning in ninth grade.
- Use graduation rates that have clear and consistent national definitions, and are reported as 4-year and 5-year (and possibly others) completion rates.
- Prohibit schools from exempting students who have been incarcerated from their graduation rate calculation, out of concern for the growing problem of the school-to-prison pipeline.
- Fund data system upgrades and the training and support required to manage the longitudinal data systems necessary to track multi-year graduation rates.

In addition to improving reporting, there are many programs the federal government can promote to improve graduation rates for vulnerable students and schools. LCCR supports amending the law to:

- Fund research and technical assistance on indicators of dropping out in early grades and effective early intervention strategies.
- Add individual graduation plans for parenting teens and students facing other graduation challenges, such as chronic absenteeism.
- Target professional development to dropout prevention.
- Fund more intervention programs and services to reach students at risk of dropping out.
- Add requirements in the SEA and LEA plans on rigorous coursework and on-grade course-taking.
- Make career and technical education (CTE) programs more widely available for students for whom CTE programs can serve as an incentive to graduate.
- Support Early College High Schools to address one area of lack of proficiency, e.g. reading, language proficiency, math, or science.
- Fund extended learning time in high school.
- Strengthen parental involvement provisions.

LCCR believes that access to a high quality public education is a civil right for all children and that in the tradition of the Civil Rights Act 1964 and the Voting Rights Acts of both 1965 and



2006, the No Child Left Behind Act can play an important role in making that right a reality. We look forward to working with Congress to strengthen the law and its implementation. For additional information, please contact Nancy Zirkin at (202) 263-2880 or Zirkin@civilrights.org, or David Goldberg, Program Manager and Special Counsel, at (202) 466-0087 or Goldberg@civilrights.org.

Sincerely,

Wade Henderson
President & CEO

Nancy Zirkin
Vice President & Director of Policy

cc: Senate Committee on Health, Education, Labor & Pensions
House Committee on Education and the Workforce



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Testimony of Wade J. Henderson, President and CEO Leadership Conference on Civil Rights

Joint Hearing of the House and Senate Education Committees

“Elementary and Secondary Education Act Reauthorization: Improving NCLB to
Close the Achievement Gap”

March 13, 2007

Good morning, I am Wade Henderson, President and CEO of the Leadership Conference on Civil Rights (LCCR), the nation’s oldest, largest, and most diverse civil and human rights coalition, with nearly 200 member organizations working to build an America as good as its ideals.

I would like to thank Chairman Kennedy and Chairman Miller, Ranking Members Enzi and McKeon, and all of the Members of both the House Education and Workforce Committee and the Senate Health, Education, Labor & Pensions Committee for the opportunity to testify at this important joint hearing today.

The Leadership Conference is issuing a formal letter to the committees today regarding the reauthorization of the No Child Left Behind Act (NCLB) that includes both our core principles for education reform and policy recommendations for changes to the current law. I would ask that it be included along with the written version of my testimony in the hearing record.

I would like to use the remainder of my time before the committee today, however, to make a larger point regarding the future of NCLB. For almost a century now, the civil rights community has recognized that the twin pillars of American democracy have been the right to vote and securing equal educational opportunity for all Americans. In that regard, NCLB may be one of the most important civil rights laws that this Congress will address. For example, at its most basic level, its Adequate Yearly Progress requirement gives parents, students, teachers, and school administrators information on the progress of their schools, and ultimately seeks to break the cycle of failure that has continued to deny some children access to quality education.

We urge you to be guided by the following principles as you consider reauthorization. First, federal policy must be designed to raise academic standards. Second, those high standards must apply equally to all students, of all backgrounds. Third, schools should be held accountable for meeting academic standards. Fourth, there should be high quality assessments that are linked to academic standards. Finally, federal and state governments must ensure that schools,



particularly those in neighborhoods of concentrated poverty, have the resources they need to give all children the chance to meet those standards.

The *Brown* Standard

By any standard, *Brown v. Board of Education* was the most important Supreme Court case of the 20th century. In *Brown*, the Court promised an equal education to all American children, and said of education:

It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. 347 U.S. 483 (1954)

Access to a high quality public education is still a fundamental right upon which all others depend; and yet 50 years later, the promise of *Brown* remains unfulfilled. Inequality is rampant by almost every measure. NCLB's test scores paint a bleak picture of the achievement gap, with virtually every state's white students passing state exams at a significantly higher rate than low income, minority, and language minority students. According to an Urban Institute study, the national graduation rate for white students is 75 percent – which is not high enough – but it is only 50 percent for African-Americans, 53 percent for Latinos, and 51 percent for Native Americans.

But the real crime is the opportunity gap. According to the National Center for Education Statistics, minority students are more than twice as likely to have inexperienced teachers. Research has shown that high poverty schools have a 50 percent higher rate of low scoring teachers. Low income, minority, and language minority students attend schools with far less funding; they attend larger classes that are more likely to be taught by out-of-subject teachers and in worse facilities; and have fewer and older books, as well as less access to computers, high-speed internet, and modern science labs.

Education Reform: The New National Challenge

It was President John F. Kennedy, who in 1961 challenged Congress and the nation to reach the moon within 10 years. We did it in about eight and a half.

We have only one moon, and at the closest point in its orbit, it is still more than 200,000 miles from the Capitol dome. But we got there. There are more than 100 public schools within a couple of miles of the Capitol dome that failed to meet their proficiency targets under NCLB. We can accept no excuse for not getting to every single one of them, too – and every one like them in every city in America.



What we need is the same kind of national commitment to education that we gave to the space race. President Kennedy did not call the nation to action just to inspire us with a lofty goal. He was motivated by a real world challenge posed by a foreign policy threat. While we don't have Sputnik and the Soviet Union to galvanize us into action this time, we do have a pending social and economic crisis.

Declining literacy levels, changing demographics, and workplace restructuring are colliding to greatly expand inequities in wealth and opportunity and drive Americans further apart. Tens of millions of low-skilled adults will be competing for jobs, not only with one another, but also with workers with equal or better skills in low wage foreign economies. Over the next few decades, as older, better educated workers retire, they will be replaced by younger, less educated workers with fewer skills. If these challenges are not adequately addressed, these forces will limit our nation's economic potential and threaten our democratic ideals.

The scope of the problem is staggering and the consequences are only going to get worse. In a report issued last month called *America's Perfect Storm: Three Forces Changing Our Nation's Future*, the Educational Testing Service (ETS) detailed the confluence of the three trends – worsening educational inequities, demographic changes, and the continuing evolution of the economy – and the devastating impact they will have by 2030 if we do not dramatically change course.

Congress has found that virtually all children can learn at high levels. Everyone involved with education – starting this morning with the Members of Congress and the advocates at this table and in the seats; as well as teachers, principals, local school boards, state boards of education, local and state elected officials, and the President – must be held accountable for students reaching their full educational potential. The Leadership Conference will be organizing its coalition members and grassroots partners and employing its communications network, including www.civilrights.org and www.realizethedream.org, to continue beating the drum for education reform.

Moreover, it is going to take federal, state, and local cooperation. It is also going to take a lot of money – money measured by the size of the job to be done, not by how much we've spent in the past.

Almost everyone agrees that substantial additional resources are needed and that the shortfall has grown significantly since NCLB was passed – some say by as much as \$70 billion over the last six years. During the same six-year period, congressional budgets and appropriations have run up an enormous national debt that our children are going to have to pay off eventually, so those children have a pretty good claim that we should be investing a lot more in their education.

While the federal share of total education spending is only a down payment, federal leadership is crucial. This Congress has the opportunity to use the reauthorization of No Child Left Behind to boldly attack the entrenched inequities and failures within our educational system and try to head off ETS's perfect storm.



We cannot continue to provide the least education to the most rapidly growing segments of society at exactly the moment when the economy will need them the most. When 21st Century jobs require a science education, for how long will we continue to be the land of opportunity if we tolerate an opportunity gap where racial, economic, and linguistic disparities combine to make white students more than four times as likely as African-American and Latino students to have access to Advanced Placement science classes?

LCCR believes that access to a high quality public education is a civil right for all children and that in the tradition of the Civil Rights Act 1964 and the Voting Rights Acts of both 1965 and 2006, the No Child Left Behind Act can play an important role in making that right a reality. We look forward to working with Congress to strengthen the law and its implementation.

Thank you very much.

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