

# FLORIDA DEPARTMENT OF EDUCATION



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June 2, 2008

Richard L. Smith  
Office of English Language Acquisition  
U.S. Department of Education  
400 Maryland Avenue, S.W. Room 10087  
Potomac Center Plaza  
Washington, DC 20202

Re: Comments on the Title III Notice of Proposed Interpretations

Dear Mr. Smith,

The Florida Department of Education has the following comments on the Title III Notice of Proposed Interpretations published in the Federal Register on May 2, 2008.

1. Clarification on composite score for Listening/Speaking component of English language proficiency assessment

We are seeking confirmation that your "Interpretation for AMAO 2," on page 24268 of the Federal Register allows the use of a subscore that includes both listening and speaking domains combined so that three individual scores: listening/speaking, reading, and writing could be used. Aural/oral assessments generally combine these components and they are intertwined such that the results cannot be disentangled. We read the proposed interpretation to approve an aural/oral score as long as we can demonstrate that such composite score is a "valid and effective measure of a student's proficiency in speaking and listening." Clarification is needed about the use of a single score for these domains.

The USED should clarify that proficiency in combined oral language would satisfy the requirement for proficiency in the domains of listening and speaking. There are several good reasons for the USED to do so. A contrary interpretation, that proficiency must be demonstrated separately in speaking and listening, seems inconsistent with NCLB statutory language that is quoted in a different section of the Notice (section 1).

DEBORAH KEARNEY

GENERAL COUNSEL

There are also substantive reasons not to require separate proficiency scores for speaking and listening:

a) In the context of Title III assessment, speaking items require an auditory or written prompt. Thus, speaking items invariably also measure the listening or reading domains. In most cases, assessments rely more on auditory prompts than written ones. Therefore, given the extent to which listening and subsequently speaking are intertwined, States should be permitted to report speaking and listening items using a single oral skills scale score.

b) Requiring a separate speaking scale score would necessitate a significant number of additional speaking items. Since each such item would have to be individually-administered to students, this would substantially increase the test administration burden on educators. Given the intertwined nature of these domains (discussed above), the benefits of such a separate scale would not constitute a worthwhile investment of time and resources.

Additional clarification is needed on the use of an overall composite proficiency score that combines separate performance scores across all four domains, as long as the composite score is a valid and effective measure of a student's proficiency in each of the ELP domains. This implies that there is a clear measure of validity and effectiveness in this context. More guidance is needed to explain the discretion states have in making these validity determinations. If validity in this context is interpreted to be a technical criterion about which peer reviewers' judgments would be needed, more information is needed about how this technical criterion might be evaluated. Providing this guidance in advance of an external peer review process, will enable states to conduct their own reviews and modify direction as may be needed as soon as possible.

The specific language to which we are referring is on page 24268 of the Register and we have placed in bold the particular phrases we believe are supportive our interpretation:

Interpretation for AMAO 2: With regard to AMAO 2, attaining English language proficiency, the Secretary proposes to interpret Title III **to allow States to base their student performance expectations and accountability targets** for attainment on assessment results derived from **either (1) separate student performance levels or scores in each of the language domains or (2) a single composite score or performance level derived by combining performance scores across domains, provided that such a composite score can be demonstrated to be a valid and effective measure of a student's proficiency in each of the English language proficiency domains.**

In setting student performance expectations and accountability targets for attaining proficiency in English (AMAO 2), it is the Secretary's proposed interpretation of Title III that a LEP student must score proficient or above

in each and every language domain required under Title III in order to be considered to have "attained proficiency" on a State's ELP assessment. **If a State's ELP assessment generates a composite score, the State would have to demonstrate that an overall proficient ELP score represents proficiency in all domains for students served by Title III.**

2. Does use of subjective or varying criteria for entry and exit determinations undermine the statistically reliability of the English language proficiency assessment?

The proposed interpretation indicates that a state's definitions of English language proficiency must be the same for reporting AMAO 2 as the state uses to determine that students from the LEP subgroup are no longer need services under Title III and are prepared to exit the LEP subgroup for Title I accountability purposes. Further, the interpretation states that a state may "use criteria in addition to ELP assessment results to determine a student's LEP status, as long as those criteria are applied consistently across all subgrantees in a State." The interpretation offers the examples of states requiring students to demonstrate proficiency on content assessments and states considering LEP students' achievement in content classes. Inasmuch as achievement in content classes and other similar criteria introduces a subjective element into the assessment of proficiency, the result could be a wide range of proficiency expectations. Even if the same standards were applied from district to district, such criteria as "achievement in content classes" varies considerably by nature.<sup>1</sup> The results would therefore predictably vary from district to district and even school by school. Due to these variations, the population of students defined as LEP and their respective levels of English language of proficiency would vary considerably from district to district.

An additional concern is the reliance solely on assessment criteria for program exit. Traditionally, the use of an individual educational planning committee has been perceived as best practice for placing students in or exiting students from a special program. Some states, including Florida, have valued the contributions of local educators in making entrance and exit decisions for students. In the case of ELL students, Florida has engaged local educators in reviewing all available information (e.g., assessment and school success) in making decisions about students. The USED should clarify the value and role of local educators to review and analyze information and their discretion in making final decisions about individual students. Further, the USED should clarify how states should utilize these decisions in summarizing and reporting Title III AMAOs.

Section 1111(b)(2)(C)(v)(II)(dd) of the ESEA requires AYP determinations for LEP students. Section 1111(b)(2)(C)(ii) requires that AYP progress be defined by the State in a manner that is statistically valid and reliable. The USED has indicated that for purposes of AYP accountability and reporting, membership in the LEP subgroup must be defined

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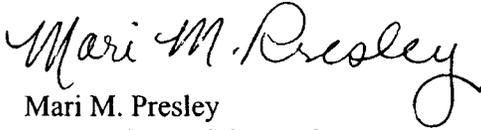
<sup>1</sup> Content area classes vary by type, difficulty, instructor, and have myriad other variations.

in a manner that is statistically valid and reliable and must not vary from district to district. The Florida Department of Education's question is whether the variability allowed where determinations include such criteria as "achievement in content classes" would undermine the statistical reliability of the determination of proficiency.

3. Time for Implementation

The Florida Department of Education notes that some aspects of the proposed interpretation may require states to alter their assessments and/or their entry/exit criteria. States typically have rules, regulations, and other legal constraints/requirements for which much time is required to change and make effective implementation of the changes. Changes in the assessment tests may require two or more years in development and field-testing and changes in entry/exit criteria or other policies may take a year or more. Further, full implementation of any changes requires time to announce the changes and to provide guidance and training about the changes prior to full implementation. We therefore request that the U.S.D.E. afford adequate time for states to implement the proposed interpretation.

Sincerely,



Mari M. Presley  
Deputy General Counsel