

THE BOARD OF REGENTS
THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT

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To: Chancellor Bennett,
Regents Bottar and Tisch, EMSC Co-chairs

From: Saul B. Cohen

The NCLB requirement of the ELA tests for LEP/ELL students is on the EMSC agenda for the December meeting. At that time, the committee will be asked to affirm New York's compliance with the U.S. DOE's directives that ELA tests be administered to all LEP/ELL students who, as of January 3, 2007, have been enrolled in a school in the U.S. (excluding Puerto Rico) for one year or more.

At the November meeting, I urged the Board to refuse to comply with this mandate. It's clear that requiring the ELA test so prematurely will produce meaningless results, while sapping the morale of ELL students, their teachers and parents, and focusing time and energy narrowly on test preparations.

In response to my urgings, the Commissioner and Counsel stated that they were continuing to negotiate the issue with an Assistant Secretary of Education. There is little indication that such discussions will yield useful results. Clearly only the kinds of legal and political pressures that have been mounted by the Connecticut Attorney General and NEA, as well as by many school districts of educational advocacy groups throughout the country, will do the trick.

The Board has heard from New York State's major school board, administrators, and teachers organizations, as well as individual teachers and hundreds of parents. If we do not act in December, some ELL/LEP students will have to take the ELA test as soon as this coming January 2007. The time for us to take a stand is now. We should inform US DOE that we will oppose the compliance requirements through legal action.

I'm therefore requesting that the following motions be introduced at the EMSC meeting. Regents Cortés-Vázquez (who cannot be present at the meeting) and Phillips join me in these motions.

Motions

- 1) This Committee (Board) deems it educationally inappropriate and unfair for LEP/ELL students to be required to take the ELA test after being enrolled in school in the U.S. for only one year. Instead, they should be given a three-year grace period, unless their NYSESLAT test results demonstrate that they have attained an appropriate command of the English language before the end of the three-year period.

- 2) That the Board of Regents request that that the New York State Attorney General (A.G.) bring a lawsuit against USDOE, enjoining it from applying the present requirement. (The A.G. may deem it desirable to join the Connecticut A.G.'s lawsuit that was lodged in August 2005.)

- 3) That the Regents appoint a subcommittee to meet with the New York State Congressional delegation to advocate desired changes in the NCLB legislation, as well as to secure full funding for the law. In crafting such recommendations, a study group of educational leadership should be convened to provide the subcommittee with advice.