From: <JAScott@AkinGump.com>
To: "Sandy Kress ( CN=Sandy Kress/OU=OPD/O=EOP [ OPD ] )"
Cc: "Tiffany L. Barfield ( CN=Tiffany L. Barfield/OU=OPD/O=EOP [ OPD ] )"
Subject: : FW: Title III revisions - for 9 AM Senate meeting
Date: Friday, March 23, 2001 9:35 AM

-----Original Message-----
From: Hansen, Randy [mailto:Randy_Hansen@ed.gov]
Sent: Friday, March 23, 2001 6:58 AM
To: Kress, B. Alexander; 'Sarah Youssef'; Corwin, Thomas; Cook, Sandra; Jones, Lonna
Cc: Kristy, Jack; Riddle, Paul; Boothby, Clayton; Wetmore, Cynthia; Chapman, John G
Subject: Title III revisions - for 9 AM Senate meeting
Importance: High

Attached is a revised draft of Title III for this morning's meeting:

<<b-esea-lep(Senate)4.doc>>

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- b-esea-lep(Senate)4.doc
ATT CREATION TIME/DATE:   0 00:00:00.00
File attachment <P_NUJ81004_OPD.TXT_1>
The following document is attachment
P_NUJ81004_OPD.TXT_1
SEC. 301. Part A of Title III is amended to read as follows:

"PART A — LANGUAGE MINORITY STUDENTS

"FINDINGS, POLICY, AND PURPOSE

"SEC. 3101. (a) FINDINGS. Congress makes the following findings:

"(1)(A) Educating limited English proficient students, including recent immigrant children, is an urgent goal for many local educational agencies, but that goal is not being achieved.

"(B) Each year, 640,000 limited English proficient students are not served by any sort of program targeted to the students' unique needs.

"(C) In 1998, only 15 percent of local educational agencies that applied for bilingual education enhancement grants and comprehensive school grants (as those programs were authorized by the Bilingual Education Act) received such funding.

"(2)(A) In 1999, the school dropout rate for Hispanic students, the largest group of limited English proficient students, was approximately 29 percent, and was approximately 44 percent for Hispanics born outside of the United States.

"(B) A Department of Education report regarding school dropout rates states that language difficulty `may be a barrier to participation in United States schools'.

"(C) Reading ability is a key predictor of graduation and academic success.
"(3) Through fiscal year 2001, bilingual education capacity and
demonstration grants under the Bilingual Education Act—
"(A) have spread funding too broadly to make an impact on
language instruction educational programs implemented by State educational
agencies and local educational agencies;
"(B) have not provided sufficient flexibility to State
educational agencies and local educational agencies, even though their
personnel are the most familiar with the educational needs of their limited English
proficient students and are in the best position to determine the most appropriate
instructional methods for those students; and
"(B) have lacked concrete performance measures.
"(4)(A) Since 1979, the number of limited English proficient children
in schools in the United States has doubled to more than 3,000,000, and
demographic trends indicate that the population of limited English proficient
children will continue to increase.
"(B) Language-minority students in the United States speak
virtually all world languages, including many that are indigenous to the United
States.
"(C) The rich linguistic diversity that language-minority
students bring to classrooms in the United States enhances the learning
environment for all students and should be valued for the significant, positive
impact it has on the entire school environment.
“(D) Parent and community participation in educational language programs for limited English proficient students contributes to program effectiveness.

“(E) The Federal Government has a special and continuing obligation, as reflected in title VI of the Civil Rights Act of 1964 and section 204(f) of the Equal Educational Opportunities Act of 1974, to ensure that States and local educational agencies take appropriate action to provide equal educational opportunities to limited English proficient children and youth, and other children and youth.

“(F) The Federal Government also has a special and continuing obligation to assist States and local educational agencies, as exemplified by programs authorized under this title, to—

“(i) develop the capacity to provide programs of instruction that offer equal educational opportunities to limited English proficient children and youth, and other children and youth; and

“(ii) implement high-quality instructional programs for limited English proficient children and youth, including recent immigrant children and youth, that are designed to prepare them to enter all-English instructional settings after three consecutive years of enrollment in U.S. schools.

“(5) Limited English proficient children and youth face a number of challenges in receiving an education that will enable them to participate fully in society, including—
"(A) disproportionate attendance at high-poverty schools, as demonstrated by the fact that, in 1994, 75 percent of limited English proficient students attended schools in which at least half of all students were eligible for free or reduced-price meals;

"(B) the limited ability of parents of those children and youth to participate fully in the education of their children because of the parents’ own limited English proficiency;

"(C) a shortage of teachers and other staff who are professionally trained and qualified to serve those children and youth; and

"(D) lack of appropriate performance and assessment standards that distinguish between language ability and academic achievement so that State educational agencies and local educational agencies are equally as accountable for the achievement of limited English proficient students in academic content while the students are acquiring English language skills as the agencies are for enabling the students to acquire those skills.

"(b) POLICY. It is the policy of the United States that, in order to ensure equal educational opportunity for all children and youth, and to promote educational excellence, the Federal Government should—

"(1) assist States and, through the States, local educational agencies and schools to build their capacity to establish, implement, and sustain programs of instruction and English language development for children and youth with limited English proficiency;
(2) hold States and, through the States, local educational agencies and schools accountable for increases in English proficiency and core content knowledge among limited English proficient students; and

(3) promote parental and community participation in limited English proficiency programs.

(c) PURPOSES. The purposes of this part are—

(1) to assist all limited English proficient students, including recent immigrant students, to attain English proficiency;

(2) to assist all limited English proficient students, including recent immigrant students, to develop high levels of attainment in the core academic subjects so that those students can meet the same challenging State content standards and challenging State student performance standards as all students are expected to meet, as required by section 1111(b)(1);

(3) to assist local educational agencies to develop and enhance their capacity to provide high-quality instructional programs designed to prepare limited English proficient students, including recent immigrant students, to enter all-English instructional settings within three years; and

(4) to provide the assistance described in paragraphs (1), (2), and (3) by—

(A) streamlining language instruction educational programs into a program carried out through a performance-based grant for State and local educational agencies to help limited English proficient students, including recent immigrant students, become proficient in English;
“(B) requiring States and, through the States, local educational agencies and schools to—

"(i) demonstrate improvements in the English proficiency of those students each fiscal year; and

"(ii) make adequate yearly progress with limited English proficient students, including recent immigrant students, in the core academic subjects as described in section 1111(b)(2); and

"(C) providing State educational agencies and local educational agencies with the flexibility to implement instructional programs, tied to scientifically based research, that the agencies believe to be the most effective for teaching English.

"DEFINITIONS

"SEC. 3102. Except as otherwise provided, in this part:

"(1) CORE ACADEMIC SUBJECT. The term 'core academic subject' has the meaning given the term in [section 2002?].

"(2) IMMIGRANT CHILDREN AND YOUTH. The term 'immigrant children and youth' means individuals who—

"(A) are aged 3 through 21;

"(B) were not born in any State; and

"(C) have not been attending one or more schools in any one or more States for more than three full academic years.
"(3) LIMITED ENGLISH PROFICIENT STUDENT. The term 'limited English proficient student' means an individual aged 5 through 17 enrolled in an elementary school or secondary school—

"(A) who—

"(i) was not born in the United States or whose native language is a language other than English;

"(ii)(I) is a Native American or Alaska Native, or a native resident of the outlying areas; and

"(II) comes from an environment where a language other than English has had a significant impact on such individual's level of English language proficiency; or

"(iii) is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

"(B) who has sufficient difficulty speaking, reading, writing, or understanding the English language, and whose difficulties may deny the individual—

"(i) the ability to meet the State's proficient level of performance on State assessments described in section 1111(b)(4) in core academic subjects; or

"(ii) the opportunity to participate fully in society.

"(4) LANGUAGE INSTRUCTION EDUCATIONAL PROGRAM. The term 'language instruction educational program' means an instructional course in
which a limited English proficient student is placed for the purpose of becoming proficient in the English language.

"(5) NATIVE LANGUAGE. The term 'native language,' when used with reference to an individual of limited English proficiency, means the language normally used by the individual or, in the case of a child or youth, the language normally used by the parents of the child or youth.

"(6) SCIENTIFICALLY BASED RESEARCH. The term 'scientifically based research' has the meaning given the term in [section 1701(f) / 8101(31)].

"(7) SPECIALLY QUALIFIED AGENCY. The term 'specially qualified agency' means a local educational agency in a State that does not participate in a program under this part for a fiscal year.

"(8) STATE. The term 'State' means each of the 50 States of the United States and the District of Columbia.

"PROGRAM AUTHORIZED

"SEC. 3103. (a) GRANTS AUTHORIZED. The Secretary shall award grants, from allotments under subsection (b), to each State having a State plan approved under section 3105(c), to enable the State to help limited English proficient students become proficient in English.

"(b) RESERVATIONS AND ALLOTMENTS.—(1) RESERVATIONS. From the amount appropriated under section 3111 to carry out this part for each fiscal year, the Secretary shall reserve—

"(A) 1/2 of 1 percent of such amount for payments to the Secretary of the Interior for activities approved by the Secretary of Education,
consistent with this part, in schools operated or supported by the Bureau of Indian Affairs, on the basis of their respective needs;

"(B) 1/2 of 1 percent of such amount for payments to outlying areas, to be allotted in accordance with their respective needs for assistance under this part as determined by the Secretary, for activities, approved by the Secretary, consistent with this part; and

"(C) 1/2 of 1 percent of such amount for payments to the Commonwealth of Puerto Rico, for activities, approved by the Secretary, consistent with this part.

"(2) STATE ALLOTMENTS. From the amount appropriated under section 3111 for any of the fiscal years 2002 through 2006 that remains after making reservations under paragraph (1), the Secretary shall allot to each State having a State plan approved under section 3105(c)—

"(A) 67 percent of the remainder according to the same ratio as the number of limited English proficient students in the State bears to the number of such students in all States; and

"(B) 33 percent of the remainder according to the same ratio as the number of immigrant children and youth in the State bears to the number of such children and youth in all States.

"(3) DATA. For the purpose of determining the number of limited English proficient students in a State and in all States, and the number of immigrant children and youth in a State and in all States, for each fiscal year, the
Secretary shall use data that will yield the most accurate, up-to-date numbers of such students, which may include—

"(A) data available from the Bureau of the Census; or

"(B) data submitted to the Secretary by the States.

"(4) HOLD-HARMLESS AMOUNTS. Notwithstanding paragraph (2), the amount allotted to each State under paragraph (2)(A) for fiscal year 2002 shall be not less than 85 percent of the total amount the State and entities within the State received for fiscal year 2001 under parts A and B of title VII of this Act (as it was in effect on the day before the effective date of the [NAME OF ACT]), and the amount so allotted to each State for fiscal year 2003 shall be not less than 65 percent of that total amount for fiscal year 2001 under parts A and B of Title VII.

"(c) DIRECT AWARDS TO SPECIALLY QUALIFIED AGENCIES.—

(1) NONPARTICIPATING STATE. If a State educational agency chooses not to participate in a program under this part for a fiscal year, or fails to submit an approvable application under section 3105, a specially qualified agency in such State desiring a grant under this part for the fiscal year shall apply directly to the Secretary to receive a grant under this subsection.

"(2) DIRECT AWARDS. The Secretary may award, on a competitive basis, the amount the State educational agency is eligible to receive under subsection (b)(2) directly to specially qualified agencies in the State desiring a grant under this part and having an application approved under section 3105(c).
"(3) ADMINISTRATIVE FUNDS. A specially qualified agency that receives a direct grant under this subsection may use not more than 1 percent of the grant funds for a fiscal year for the cost of administering this part.

"(d) REALLOCATION. Whenever the Secretary determines that any amount of a payment made to a State or specially qualified agency under this part for a fiscal year will not be used by the State or agency for the purpose for which it was made, the Secretary shall, in accordance with such rules as he or she deems appropriate, make such amount available to other States or specially qualified agencies for carrying out that purpose.

"WITHIN-STATE ALLOCATIONS

"SEC. 3104. (a) GRANT AWARDS. (1) Each State educational agency receiving a grant under this part shall use at least 95 percent of its allocation under section 3103(b)(2) to award subgrants, from allocations under subsection (b), to local educational agencies in the State to carry out the activities described in section 3107.

"(2) Notwithstanding paragraph (1), a State educational agency receiving a grant under this part may use not more than 15 percent of its allocation under section 3103(b)(2) to award subgrants to local educational agencies in the State that experience a substantial increase in the number of students enrolled in public elementary and secondary schools under the jurisdiction of the agency who are recent immigrants.

"(b) ALLOCATION FORMULA. Each State educational agency receiving a grant under this part shall award grants for a fiscal year by allocating to each
local educational agency in the State having a plan approved under section 3106
an amount that bears the same relationship to the amount of funds allocated
under subsection (a)(1) for the fiscal year as the population of limited English
proficient students in schools served by the local educational agency bears to the
population of limited English proficient students in schools served by all local
educational agencies in the State.

"(c) RESERVATIONS.—(1) STATE ACTIVITIES. Each State educational
agency receiving a grant under this part may reserve not more than 5 percent of
the grant funds to carry out activities described in the State plan submitted under
section 3105.

"(2) ADMINISTRATIVE EXPENSES. From the amount reserved
under paragraph (1), a State educational agency may use not more than 2
percent for the planning costs and administrative costs of carrying out the
activities described in the State plan and providing grants to local educational
agencies.

"STATE AND SPECIALLY QUALIFIED AGENCY PLANS

"SEC. 3105. (a) PLAN REQUIRED. Each State educational agency and
specially qualified agency desiring a grant under this part shall submit a plan to
the Secretary at such time, in such manner, and containing such information as
the Secretary may require.

"(b) CONTENTS. Each plan submitted under subsection (a) shall—

"(1) describe how the State or specially qualified agency will
establish standards and benchmarks for English language development that are
aligned with the State content and student performance standards described in
section 1111(b)(1);

"(2) contain an assurance that the—

"(A) State educational agency consulted with local
educational agencies, education-related community groups and nonprofit
organizations, parents, teachers, school administrators, and English language
instruction specialists, in setting the performance objectives; and

"(B) specially qualified agency consulted with education-related community groups and nonprofit organizations, parents, teachers, and
English language instruction specialists, in setting the performance objectives;

"(3) describe how—

"(A) in the case of a State educational agency, the State
educational agency will hold local educational agencies and elementary schools
and secondary schools accountable for—

"(i) meeting the performance objectives described in
section 3109 for English proficiency; and

"(ii) making adequate yearly progress with limited
English proficient students in the core academic subjects as described in section
1111(b)(2); and

"(B) in the case of a specially qualified agency, the agency
will hold elementary schools and secondary schools accountable for—
“(i) meeting the performance objectives described in section 3109 for English proficiency; and

“(ii) making adequate yearly progress with limited English proficient students in the core academic subjects as described in section 1111(b)(2);

“(4) in the case of a specially qualified agency, describe the activities for which assistance is sought, and how the activities will increase the speed and effectiveness with which students learn English;

“(5) in the case of a State educational agency, describe how local educational agencies in the State will be given the flexibility to teach English—

“(A) using a language instruction curriculum that is tied to scientifically based research and has been demonstrated to be effective; and

“(B) in the manner the local educational agencies determine to be the most effective; and

“(6) describe how—

“(A) in the case of a State educational agency, the State educational agency will—

“(i) provide technical assistance to local educational agencies and elementary schools and secondary schools for the purposes of identifying and implementing English language instruction educational programs and curricula that are tied to scientifically based research; and

“(ii) provide technical assistance to local educational agencies and elementary schools and secondary schools for the purposes of
helping limited English proficient students meet the same challenging State
content standards and challenging State student performance standards as all
students are expected to meet; and

"(B) in the case of a specially qualified agency, the specially
qualified agency will—

"(i) provide technical assistance to elementary
schools and secondary schools served by the specially qualified agency for the
purposes of identifying and implementing programs and curricula that are tied to
scientifically based research; and

"(ii) provide technical assistance in elementary
schools and secondary schools served by the specially qualified agency for the
purposes described in subparagraph (A)(ii).

"(c) APPROVAL. The Secretary, after using a peer review process, shall
approve a State plan or a specially qualified agency plan if the plan meets the
requirements of this section, and holds reasonable promise of achieving the
purposes described in section 3101(c).

"(d) DURATION OF THE PLAN. — (1) IN GENERAL. Each State plan or
specially qualified agency plan shall—

"(A) remain in effect for the duration of the State educational
agency’s or specially qualified agency’s participation under this part; and

"(B) be periodically reviewed and revised by the State
educational agency or specially qualified agency, as necessary, to reflect
changes to the State’s or specially qualified agency’s strategies and programs
carried out under this part.

"(2) ADDITIONAL INFORMATION. If the State educational agency
or specially qualified agency makes significant changes to the plan, such as the
adoption of new performance objectives or assessment measures, the State
educational agency or specially qualified agency shall submit information
regarding the significant changes to the Secretary.

"(e) CONSOLIDATED PLAN. A State plan submitted under subsection (a)
may be submitted as part of a consolidated plan under [section 8302?].

"(f) SECRETARY ASSISTANCE. Pursuant to [section 7104(a)(3)?], the
Secretary shall provide technical assistance, if requested, in the development of
English language development standards and English language proficiency
assessments.

"LOCAL PLANS

"SEC. 3106. (a) PLAN REQUIRED. Each local educational agency
desiring a subgrant from the State educational agency under section 3104 shall
submit a plan to the State educational agency at such time, in such manner, and
containing such information as the State educational agency may require.

"(b) CONTENTS. Each local educational agency plan submitted under
subsection (a) shall—

"(1) describe how the local educational agency will use the
subgrant funds to meet the English proficiency performance objectives described
in section 3109;
"(2) describe how the local educational agency will hold elementary schools and secondary schools accountable for—

"(A) meeting the performance objectives; and

"(B) making adequate yearly progress with limited English proficient students in the core academic subjects as described in section 1111(b)(2);

"(3) contain an assurance that the local educational agency consulted with teachers (including language instruction specialists), school administrators, and parents, and, if appropriate, with education-related community groups and nonprofit organizations, and institutions of higher education, in developing the local educational agency plan; and

"(4) describe how the local educational agency will use the disaggregated results of the student assessments required under section 1111(b)(4), and other measures or indicators available to the agency, to review annually the progress of each school served by the agency under this part and under title I to determine whether the schools are making the adequate yearly progress necessary to ensure that limited English proficient students attending the schools will meet the State's proficient level of performance on the State assessment described in section 1111(b)(4) within 10 years after the date of enactment of the [NAME OF ACT].
"USES OF FUNDS

"SEC. 3107. (a) ADMINISTRATIVE EXPENSES. Each local educational agency receiving a grant under section 3104 may use not more than 1 percent of the grant funds for a fiscal year for the cost of administering this part.

"(b) ACTIVITIES. Each local educational agency receiving grant funds under section 3104—

(1) shall use the grant funds that are not used under subsection (a) for one or both of the following:

"(A) To increase limited English proficient students' proficiency in English by providing high-quality language instruction educational programs that are—

"(i) tied to scientifically based research demonstrating the effectiveness of the programs in increasing English proficiency; and

"(ii) approved by the State educational agency.

"(B) To provide high-quality professional development activities for teachers of limited English proficient students, including teachers in classroom settings that are not language instruction programs, that are—

"(i) designed to enhance the ability of the teachers to understand and use curricula, assessment measures, and instructional strategies for limited English proficient students;

"(ii) tied to scientifically based research demonstrating
the effectiveness of those activities in increasing students' English proficiency or
substantially increasing the subject matter knowledge, teaching knowledge, and
teaching skills of those teachers;

"(C) of sufficient intensity and duration (not to include
activities such as 1-day or short-term workshops and conferences) to have a
positive and lasting impact on the teachers' performance in the classroom,
except that this subparagraph shall not apply to an activity that is one component
described in a long-term, comprehensive professional development plan
established by a teacher and the teacher's supervisor based on an assessment
of the needs of the teacher, the supervisor, the students of the teacher, and the
local educational agency; and

(2) may use the grant funds that are not used under subsection (a)
to provide parent and community participation programs that are designed to
improve language instruction educational programs for limited English proficient
students.

"PROGRAM REQUIREMENTS

"SEC. 3108. (a) PROHIBITION. In carrying out this part, the Secretary
shall neither mandate nor preclude the use of a particular curricular or
pedagogical approach to educating limited English proficient students.

"(b) TEACHER ENGLISH FLUENCY. Each local educational agency
receiving subgrant funds under section 3104 shall certify to the State educational
agency that all teachers in any language instruction educational program for
limited English proficient students funded under this part are fluent in English.
"PERFORMANCE OBJECTIVES

"SEC. 3109. (a) IN GENERAL. Each State educational agency or specially qualified agency receiving a grant under this part shall develop annual measurable performance objectives with respect to helping limited English proficient students become proficient in English. For each annual measurable performance objective, the agency shall specify an incremental percentage increase for the objective to be attained for each of the fiscal years (after the first fiscal year) for which the agency receives a grant under this part, relative to the preceding fiscal year, including increases in the number of limited English proficient students demonstrating an increase in performance on annual assessments.

"(b) ACCOUNTABILITY. Each State educational agency or specially qualified agency receiving a grant under this part shall be held accountable for meeting the annual measurable performance objectives under this part and the adequate yearly progress levels for limited English proficient students under section 1111(b)(2)(B). Any State educational agency or specially qualified agency that fails to meet the annual performance objectives shall be subject to sanctions under [section 7001(b)?].

"REGULATIONS AND NOTIFICATION

"SEC. 3110. (a) REGULATION RULE. In developing regulations under this part, the Secretary shall consult with State educational agencies, local educational agencies, organizations representing limited English proficient
individuals, and organizations representing teachers and other personnel involved in the education of limited English proficient students.

"(b) PARENTAL NOTIFICATION.—(1) IN GENERAL. Each local educational agency shall notify parents of a student participating in a language instruction educational program under this part of—

"(A) the student's level of English proficiency, how that level was assessed, the status of the student's academic achievement, and the implications of the student's educational strengths and needs for age- and grade-appropriate academic attainment, promotion, and graduation;

"(B)(i) the programs that are available to meet the student's educational strengths and needs, and how those programs differ in content and instructional goals from other language instruction educational programs; and

"(ii) in the case of a student with a disability who participates in the language instruction educational program, how the program meets the objectives of the individualized education program of the student; and

"(C)(i) the instructional goals of the language instruction educational program in which the student participates, and how the program will specifically help the limited English proficient student learn English and meet age-appropriate standards for grade promotion and graduation;

"(ii) the characteristics, benefits, and past academic results of the language instruction educational program and of instructional alternatives; and
"(iii) the reasons the student was identified as being in need of a language instruction educational program.

"(2) OPTION TO DECLINE.—(A) IN GENERAL. Each parent described in paragraph (1) shall also be informed that the parent has the option of declining the enrollment of the student in a language instruction educational program, and shall be given an opportunity to decline that enrollment if the parent so chooses.

"(B) OBLIGATIONS. A local educational agency shall not be relieved of any of the agency's obligations under title VI of the Civil Rights Act of 1964 if a parent chooses not to enroll a student in a language instruction educational program.

"(3) RECEIPT OF INFORMATION. A parent described in paragraph (1) shall receive the information required by this subsection in a manner and form understandable to the parent including, if necessary and to the extent feasible, receiving the information in the native language of the parent. At a minimum, the parent shall receive—

"(A) timely information about programs funded under this part; and

"(B) if the parent desires, notice of opportunities for regular meetings for the purpose of formulating and responding to recommendations from parents of students assisted under this part.
(4) SPECIAL RULE. A student shall not be admitted to, or excluded from, any federally assisted language instruction educational program solely on the basis of a surname or language-minority status.

(5) LIMITATIONS ON CONDITIONS. Nothing in this part shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State's, local educational agency's, elementary school's, or secondary school's specific challenging English language development standards or assessments, curricula, or program of instruction, as a condition of eligibility to receive grant funds under this part.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 3111. There are authorized to be appropriated to carry out this part $---------- for fiscal year 2002, and such sums as may be necessary for each of the 4 succeeding fiscal years.".

REPEAL OF PROGRAMS