Zaragoza-Diaz & Associates
Martha Zaragoza-Diaz

PUBLIC HEARING
September 1, 2017
Comments and Recommendations to Proposed Title V Regulations Regarding California for a Global Economy Initiative
(Proposition 58 of 2017)

I am here today representing the California Association for Bilingual Education and the Californians Together Coalition.

We welcome the opportunity to provide input to regulations promoting the development of multilingual skills. The California for a Global Economy Initiative (CA.Ed.G.E.) recognizes that multilingual learning is beneficial for all students. The intent of the Initiative is to provide an opportunity for all students to develop skills that lead to their proficiency in English and another language and to ensure that school districts meet the obligation to ensure that English learners obtain proficiency in English and reach at least grade level proficiency in academic achievement.

Outlined below are our comments and recommendations which we believe will bring additional clarity and direction to the proposed regulations. We hope they will be seriously considered in modifying the proposed Title V regulations specific to the California for a Global Economy Initiative.

Comments and Recommendations

1. **Section 11300 Definitions.** The proposed regulations fail to include definitions for two specific programs included in law [Education Code sections 306 © (1) & (2)]; dual-language immersion, transitional or development programs for English learner students or any program that would ensure "academic achievement in both English and another language". Excluding these definitions suggests that districts may rely on Sheltered English Immersion (SEI) programs alone, or make it a preferred program and still fulfill their obligations under the law. This is not the case and is exactly why CA Ed.G.E. was introduced and was designed to change.
   Recommendations:
   a) Proposed Section 11300 (d) should be amended to read as follows: "Language Acquisition programs" are educational programs designed to ensure English language acquisition as rapidly and effectively as possible for English learners, that provide instruction to pupils on the state-adopted academic content and ELD standards through Integrated and Designated ELD, and shall lead to grade level proficiency and academic achievement in both English and another language.

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Such programs include, but are not limited to: dual-language immersion, transitional or developmental programs for English learners, and Structured English Immersion. Such programs shall meet the requirements described in section 11309 of this subchapter."

b) Proposed regulation 11300 should be amended to include the definitions for both dual-language immersion programs and transitional/developmental programs for EL students:

"(n) Dual-language immersion programs means a language acquisition program that provides integrated language learning and academic instruction for native speakers of English and native speakers of another language, with goals of high academic achievement, first and second language proficiency, and cross-cultural understanding.
(o) Transitional or developmental programs for English learners means language acquisition programs that provide instruction to pupils that utilizes English and a pupil's native language for literacy and academic instruction and enables an English learner to achieve English proficiency and academic mastery of subject matter content and higher order skills, including critical thinking, in order to meet state-adopted academic content standards."

2) **Section 11300 (d) Definitions.** The definition of "Language Acquisition Programs" is confusing and creates a new category of "Language Program" not referenced in the CA.Ed.G.E and is inconsistent with Education Code section 306. Contrary to Education Code section 306© the proposed regulations narrow the definition of language acquisition programs focus solely on English acquisition and content instruction solely through English language development (ELD). It makes no mention of academic instruction in languages other than English or the CA Ed.G.E. goal of "grade level proficiency and academic achievement in both English and another language". As stated in (1) above, the proposed definition even fails to mention and fails to define, dual-language immersion programs or transitional/developmental programs for EL or any program that would ensure "academic achievement in both English and another language."
Recommendation: The proposed regulation 11300 (d) should be amended to read as follows: 'Language acquisition programs are educational designed to ensure English acquisition as rapidly and effectively as possible for English learners, that provide instruction to pupils on the state adopted academic content and ELD standards through Integrated and Designate ELD, and shall lead to grade level proficiency and academic achievement in both English and another language. Such programs include, but are not limited to: dual-

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language immersion, transitional or development programs for English learners and Structured English immersion. Such programs shall meet the requirements described in section 11309 of this subchapter."

3. **Section 11301 Community Engagement.** This proposed regulation fails to adequately reflect the new requirements imposed on school districts regarding the development of their Local Control Accountability Programs (LCAPs) during the LCAP process. It fails to also include a reference to the programs identified in Section 306; dual-language immersion and transitional or developmental programs. The language clearly fails to capture the intent of the initiative, to encourage the development of bilingual/multilingual programs where very few schools have them.
Recommendation: The proposed section should be amended to read: "(a) As part of the development of the LCAP and annual updates, an LEA shall inform and receive input from stakeholders, including the English learner parent advisory committee and the parent advisory committee, regarding the LEAs existing language acquisition programs and language programs, and establishing other programs including dual-language immersion programs, transitional or developmental programs, and Structured English Immersion programs."

4. **Section 11311. Parent Requests for Language Acquisition Programs**
This regulation should make it very clear the fact that a school district must implement requested programs, to the extent possible. We believe, based upon the language in the initiative, burden is on the school district to justify why parental requests for a particular language acquisition program will not be honored when the numerical triggers have been met. This proposed section fails to adequately reflect this burden and should, provide minimum guidelines to determine what is meant by the phrase "to the extent possible." This proposed section must be revised to make clear that the presumption is that the school will provide the requested program. Additionally, the proposed section states that resources necessary to implement a language acquisition program must be identified. However, it does not explain how these resources would factor into the determination that it is possible or not possible to implement the requested program immediately or in the future.
Recommendations: a) Add a new subsection to read as follows: "(a) A LEA shall establish and allow enrollment in any language acquisition program requested by parents in accordance with Education Code 310, to the extent possible." b) Add language explaining how "resources necessary" will be used in determining that it is possible or not possible to implement programs requested by parents.

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5. **Section 11311 (g)(3) (B) Parent Requests for Language Acquisition Programs**
The proposed subsection (g) (3)(B) does not specify the form nor the content of the denials. The proposed subsection also does not require that the explanation of a denial be reasonable or delineate specific reasons for a denial. Lastly the proposed regulation gives school districts 90 days to respond. As was required by Proposition 227, parents or guardians were provided with a full written description and, upon request from a parent or guardian, a spoken description of the structured English immersion program and any alternative courses of study and all education opportunities offered by the school district and available to the pupils. Additionally, schools were given 20 days to act on parent exception Waivers, or within 10 calendar days after the expiration of the 30-day placement in an English only classroom or 20 instructional days upon submission to the principal.
Recommendations: a) Amend this proposed subsection so that similar standards and timelines are applied necessary to create the type of parental engagement envisioned by CA Ed.G.E. b) A requirement that the district notify the requesting parent within 5 school days about whether the requested program is currently available, or whether the trigger for such a program has or has not been reached and provide notice in writing, to parents of pupils attending the school, the school's teachers, and administrators, of its determination, should be reduced to 30 days and not 90 days.

6. **Section 11311 (i) Parent Requests for Language Acquisition Programs**
The proposed subsection (i) is inconsistent with Education Code Section 310. The proposed subsection makes a distinction between parents of EL students and parents of native speakers of English with respect to determining the numerical triggers. Education Code section 310 does not make this distinction. On the contrary, the statute envisioned that the parents of native English speakers should be given the opportunity to request a bilingual/multilingual program along with parents of EL students. Allowing a school district to not consider requests from the parents of English learners when determining numerical triggers would be inconsistent with the statue, negate the role of parents of EL students in the process of seeking programs for their children and would mean that bilingual/multilingual programs would rarely be implemented.
Recommendation: Amend proposed subsection 11311 (I) to read: "(i) A school shall consider requests from parents of pupils enrolled in the school who are native speakers of English when determining whether a threshold specified in subdivision (g) is reached."

Other recommendations that should be considered are:

- Establishing an appeal process for parents in the event districts do not abide by the requirements of CA Ed.G.E.

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- Proposed Section 11316 should be clarified to ensure that the Notice is provided in the primary language of a parent of an EL student unless it is an unreasonable burden to do so.
- In light of California's strengthened commitment to local control and stakeholder engagement in the school funding and planning processes, proposed sections 11301 and 11311 should be amended to require more robust stakeholder engagement and feedback for the development of acquisition language programs.

The California Association for Bilingual Education and the Californians Together Coalition also signed onto the letter submitted by the California Rural Legal Assistance Inc and the Racial Justice-Education Lawyers' Committee for Civil Rights of the San Francisco Bay Area to CDE's Regulations Coordinator.

We can't emphasize enough the importance of the implementation of the CA Ed G.E. initiative via the regulations. There is much interest and excitement about the opportunities for expanded program options leading to multilingualism for all of our students. The Title V regulations need to capture the intent and language of Proposition 58 necessary to provide clear guidance and direction to school districts and schools and an understanding by parents of Proposition 58. We believe our comments and recommendations along with those provided by the California Rural Legal Assistance Inc and the Racial Justice-Education Lawyers Committee for Civil Rights of the San Francisco Bay Area provide that clarity and direction.

Please contact me t 916-395-2616 should you have questions regarding our comments or recommendations.

Thank you.

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Legislative Advocate

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ADVANCING JUSTICE LOS ANGELES

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LEGAL AID AT WORK

LEGAL AID FOUNDATION OF LOS ANGELES

LEGAL SERVICES of NORTHERN CALIFORNIA

PolicyLink

Aug. 17, 2017

Dr. Michael W. Kirst, President
State Board of Education
1430 N Street, Room 5111
Sacramento, CA 95814-5901
sbe@cde.ca.gov

Re: The State Board of Education Must Make the "Notice of Proposed Rulemaking–Amendment to California Code of Regulations, Title 5, Regarding *California Education for a Global Economy Initiative*" Accessible to the Parents of English Learner Students.

Dear President Kirst and State Board of Education Members:

We write to you as a coalition of community-based groups, educational organizations, public interest law firms and civil rights organizations concerned about the failure of the State Board of Education (SBE) to provide the Limited English Proficient (LEP) parents of California's English Learner (EL) students meaningful access to the regulatory process regarding an issue of utmost importance to the education of their children.

As you are aware, in November 2016, the citizens of California voted overwhelmingly to repeal Proposition 227 and to replace it with Proposition 58, also known as the California Education for a Global Economy (CA Ed.G.E.) Initiative.[1] Proposition 227 required that "all children in California public schools shall be taught English by being taught in English." In sharp contrast the CA Ed.G.E. Initiative recognizes that multilingual learning is beneficial for all students as well as a coveted ability in the broader California economy. To that end, it allows EL students to develop skills that lead to their proficiency in English and another language. The Initiative also recognizes the role of LEP parents to determine the program best suited to address the language needs of their children, "All parents will have a choice and voice to demand the best education for their children, including access to language programs that will improve their children's preparation for college and careers, and allow them to be more competitive in a global economy." (Educ. Code § 300 (k)).

[1] Proposition 58 won by the largest margin of any other initiative on the ballot, with 73.5% of California voters voting in favor of the Initiative and 26.5 voting against it.

The SBE's "Notice of Proposed Rulemaking" concerning the CA Ed.G.E. Initiative was posted on the California Department of Education's (CDE) website on July 28, 2017. The 45-day Public Comment period began on July 29, 2017, and ends on September 11, 2017.[2] The proposed regulations amend some existing regulations and include several new provisions to Title 5 of the California Code of Regulations (CCR) related to the education of EL students, including Sections 11300, 11301, 11309, 11310, 11311, 11312 and 11316. Proposed amendments to §11300 include several new definitions, including how "Parents" and "Parent advisory committee" are defined. Section 11309 is amended to address language acquisition programs identified under the Initiative. Several of the proposed provisions directly address the role of parents and other stakeholders in choosing the language acquisition programs to be made available within a school district. Proposed regulation § 11301 -- "Community Engagement"-- refers to the process for receiving input from parents through the development of a school district's Local Control and Accountability Plan (LCAP). Proposed regulation § 11310 – "Parental Notice" -- details how parents are to be notified of the language acquisition programs to be provided by a school district. Proposed regulation § 11311 -- "Parental Requests for Language Acquisition Programs" -- addresses how school districts are to establish a process to receive and respond to parental requests to establish specific language acquisition programs. All of these proposed regulations are of utmost importance to the parents of EL students in determining how they can meaningfully exercise their rights as parents to advocate for programs to meet the educational needs of their children. These parents should have a meaningful opportunity to learn about and to comment on how the State should implement an Initiative that was passed for the benefit of their children. It is deeply ironic that a fundamental purpose of CA Ed.G.E. initiative is to provide greater opportunity for EL students and their parents, yet all of the rulemaking information is publicly available solely in English.

The SBE must acknowledge that California has the largest EL student population in the United States and to conduct its business accordingly. Approximately 21.4% of all students enrolled in California schools are identified as EL. Another 21.3% of all students enrolled in California schools are Fluent English Proficient (FEP), which means that 43% of all California students come from homes where English is not the primary language. Of the approximately 1.3 million EL students enrolled in California public schools, 83.1% are Spanish speaking. The next two largest EL student language groups are: 1) Vietnamese (2.1%); and, 2) Mandarin (1.6%).[3] Of the approximately 1.3 million FEP students enrolled in our public schools, 72.6% come from homes were Spanish is the primary language. The next two largest FEP language groups include: 1) Vietnamese (4.0%); and, 2) Mandarin (3.0%).[4] Despite this large representation of non-

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[2] See, CDE website page "Rulemaking documents relating to the California Education for a Global Economy Initiative" http://www.cde.ca.gov/re/lr/rr/caedginitiative.asp.

[3] See, CDE DataQuest report entitled, "English Learner Students by Language by Grade – State of California – 2016-17" available at: http://data1.cde.ca.gov/dataquest/SpringData/StudentsByLanguage.aspx?Level=State&TheYear=2016-17&SubGroup=All&ShortYear=1617&GenderGroup=B&CDSCode=00000000000000&RecordType=EL.

[4] See, CDE DataQuest report entitled, "Fluent-English-Proficient Students by Language by Grade – State of California – 2016-17" available at:

English speakers and concentration of Spanish speakers the SBE has published and advertised these regulatory proposals, notices of meetings, and requests for comment in English only.

Optimally, the State Board should provide information in the languages of the top ten language groups of our EL students, which include: Spanish, Vietnamese, Mandarin, Filipino, Arabic, Cantonese, Korean, Hmong, Punjabi and Russian. But it is particularly baffling that it would not be provided in Spanish, given that state-wide 1,107,214 EL students speak Spanish. An additional 961,418 students are classified as FEP Spanish speakers. In total, 2,068,632 students, or 33%, of all students enrolled in California schools come from homes where Spanish is the primary language. At a minimum, some effort should have been made to meaningfully include the parents of these children in this regulatory process, but no such effort was made. Instead, the manner in which the State Board has undertaken this rulemaking process undermines the stated Legislative intent of the CA Ed.G.E. Initiative, which is premised on the fact that California has a moral and constitutional obligation to provide educational programs for all students regardless of ethnicity or national origin that ensure that they obtain the highest quality education, master the English language, and have access to high quality, innovative, and research-based language programs. (Educ. Code § 300 subsections (h), (n)). It also violates federal and state laws that are designed to ensure equal access to services provided by the State and its agencies.

The SBE is required under federal law to ensure that limited and non-English speaking parents are provided and receive important information provided to other parents in a language they can understand. (Title VI of the Civil Rights Act of 1964, 20 U.S.C. 2000d, and its implementing regulations at 34 C.F.R. § 100.3(a)). "School districts and S[tate] E[ducational] A[gencies] have an obligation to ensure meaningful communication with LEP parents in a language they can understand and to adequately notify LEP parents of information about any program, service, or activity of a school district or SEA that is called to the attention of non-LEP parents."[5] (See also, the Equal Educational Opportunities Act, 20 U.S.C. §§ 1701-1720). Under the Dymally-Alatorre Bilingual Services Act, state agencies have an obligation to ensure that any materials explaining services to the public be translated into any non-English language spoken by a substantial number of the public served by the agency.[6] (Gov. Code § 7295). Gov. Code § 11135 mandates that students and parents be provided "full and equal access to the benefits of" and not be "unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency. . . ."

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http://dq.cde.ca.gov/dataquest/SpringData/StudentsByLanguage.aspx?Level=State&TheYear=2016-17&SubGroup=All&ShortYear=1617&GenderGroup=B&CDSCode=00000000000000&RecordType=FEP.

[5] Dear Colleague Letter - Guidance to Ensure English Learner Students Have Access to a High-Quality Education, Office for Civil Rights and Department of Justice, (Jan. 7, 2015) page 37, available at: https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf.

[6] See, CDE's "Language Services Policy of the Department" available at: http://www.cde.ca.gov/re/di/eo/languageservices.asp.

Given the above, we therefore request that the SBE immediately devote resources to translate the public documents related to the CA Ed.G.E Initiative rulemaking process into the top ten languages spoken by California's EL students and that they be posted as soon as possible on the CDE's rulemaking website. We also request that the time to submit comments with respect to the CA Ed.G.E Initiative proposed regulations be suspended until such time as the translated versions are posted, with a new extended 45-day comment period.

Compounding the problem with respect to EL parent access to the regulatory process is the fact that the public hearing concerning these regulations will be held at 1:30 p.m. on September 11, 2017. This is a weekday when many community members will be unable to attend because of work and family obligations. This timing makes it unlikely that the people most affected by the proposed regulations will be able to meaningfully engage in the rulemaking process. This exclusion is particularly nonsensical given that the proposed regulations purport to encourage stakeholder engagement. To address the unlawful exclusion of EL parents, we ask that the Special Hearing now scheduled for September 11th be postponed and that two hearings be scheduled once the translated versions of the rulemaking materials are posted. One hearing should be held in Northern California and the other should be held in Southern California on days and times that are more accessible to working immigrant parents.

In conclusion, we request that you take the necessary steps to come into compliance with your obligations under state and federal law to translate these important documents for the State's LEP parents and that the comment period be extended and hearing process be revised to address the needs of the parents of EL students. Please inform us by August 25, 2017, whether you intend to come into compliance with the law. If you have any questions about our request, please contact either Cynthia Rice or Deborah Escobedo through the contact information provided below.

Thank you for your consideration,

Deborah Escobedo

Cynthia Rice

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cc: The Honorable Tom Torlakson, State Superintendent of Public Instruction
Karen Stapf Walters, Executive Director, State Board of Education
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STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

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September 1, 2017

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Sent via email:
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crice@crla.org

Dear Ms. Escobedo and Ms. Rice:

This is in response to your August 17, 2017, letter to State Board of Education (SBE) President Michael Kirst. You expressed concern about the proposed Title 5 regulations around the California Education for a Global Economy Initiative (CA Ed.G.E.). The regulations have been posted on the California Department of Education's (CDE) website since June 30, 2017, and can be found at: http://www.cde.ca.gov/re/lr/rr/caedginitiative.asp

Pursuant to action by the SBE on July 12, 2017, the 45-day public comment period began on July 29, 2017 and closes on September 11, 2017. Because your letter was received during this designated period, we have forwarded your letter to the Regulations Coordinator, and it will be considered as a comment received from members of the public during the 45-day public comment period.

In response to your request to continue the September 11, 2017 public hearing date or the public comment period for these regulations, staff does not have the discretion to take these actions, since the SBE specifically directed the staff to commence the public comment period and to hold the public hearing on September 11, 2017. Consistent with the rule-making requirements, your request, along with all public comments received, will be considered by the SBE upon the close of the public comment period.

However, in order to assist parents of English Learner parents and students, a translated version (Spanish) of the regulations has been posted on the CDE website, and specifically on

the page devoted to CA Ed.G.E. The link for that page is: http://www.cde.ca.gov/sp/el/er/caedge.asp.

Any member of the public can submit comments to the regulations in writing during the public comment period. In addition, comments can be made in person at the public hearing. These comments can be submitted in any language.

The CDE worked diligently to draft these regulations, and to put them out for public comment, with the end goal of efficient implementation of the CA Ed.G.E. initiative at the beginning of the 2018-19 school year. The regulation adoption process usually takes 10-12 months to complete

If you have specific comments about the content of the regulations, we hope you will avail yourselves of this opportunity to comment. All public comments benefit the process.

Sincerely,

Judy Cias

Judy Cias
Chief Counsel
State Board of Education

cc: The Honorable Tom Torlakson, Superintendent of Public Instruction

FAX

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SUBJECT:	**Comments regarding Notice of Proposed Rulemaking – Amendment to California Code of Regulations, Title 5, Regarding *California Education for a Global Economy Initiative***	DATE:	September 11, 2017
COMMENTS:	22 pages including fax cover page This document has also been emailed to regcomments@cde.ca.gov.		

Date: September 11, 2017

To: Patricia Alverson, Regulations Coordinator Administrative Support and Regulations Adoption Unit California Department of Education
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Re: **Comments regarding Notice of Proposed Rulemaking – Amendment to California Code of Regulations, Title 5, Regarding *California Education for a Global Economy Initiative***

I. INTRODUCTION

This memorandum is submitted in response to the "Notice of Proposed Rulemaking" dated July 28, 2017 in which the State Board of Education (SBE) proposes regulations implementing the *California Education for a Global Economy Initiative* (CA Ed.G.E.) The proposed regulations

modify several provisions of Title 5 of the California Code of Regulations (CCR) related to the education of English Learner (EL) students including 5 CCR §§ 11300, 11301, 11309, 11310 and 11316 and add Sections 11311 and 11312.

As explained in this memorandum, we have significant concerns about both the process by which this rulemaking is being undertaken and several of the substantive changes being proposed to the Title 5 Regulations. Substantively, there is little in the proposed regulations that further one of the underlying purposes of the CA Ed.G.E. Initiative, which is to promote the development of multilingual skills. Furthermore, in light of California's strengthened commitment to local control and stakeholder engagement in the school funding and planning process, § 11301 and § 11311 should be broadened to require more robust stakeholder engagement and feedback for the development of language acquisition programs.

Finally, we object to § 11311(g) regarding denial of parental requests for language acquisition programs to the extent that it fails to require that the explanation be in writing or offer parameters as to what type of explanation is required. It also fails to establish a mechanism by which parents can challenge a school district's denial of their requests for a new language acquisition program. Also, § 11311(g) unnecessarily more than triples the amount of time that school districts have to respond to parental requests for language acquisition programs as compared to the Proposition 227 regulations.

II. ANALYSIS

In November 2016, California voters repealed Proposition 227 overwhelmingly replacing it with Proposition 58, also known as the CA Ed.G.E. Initiative. Proposition 227 stated that "all children in California public schools shall be taught English by being taught in English." In sharp contrast, the CA Ed.G.E. Initiative recognizes that multilingual learning is beneficial for students as well as a coveted ability in the broader California economy. To that end, it is intended to provide an opportunity for all students to develop skills that lead to their proficiency in English and another language; and to ensure that districts meet the obligation to ensure that EL students obtain proficiency in English and reach at least grade level proficiency in academic achievement. CA Ed.G.E. affirmatively rejects the Proposition 227 English language instruction presumption that restricted the rights of Limited English Proficient (LEP) parents to choose from a range of pedagogically sound language acquisition programs – including dual-language immersion – to

address the needs of their children. Yet, the proposed regulations fail to require that districts provide parents with adequate notice regarding those other programs and overly emphasize Sheltered English Immersion (SEI) programs while failing to even include the definition of dual-language immersion or transitional/developmental programs included in the Initiative.

Largely, we believe that the proposed regulations should provide a roadmap for districts and an explanation of rights for parents that will promote compliance with CA Ed.G.E. Additionally, as parents are key to effective education, and in keeping with the goals of California's newly implemented Local Control Funding Formula, the regulations should provide direction to school districts about effectively engaging with stakeholders to create instruction that matches local needs. The regulations should also facilitate parental involvement in the consideration of new language acquisition programs designed to assist EL students to learn academic English and to provide to all students opportunities to gain multilingual skills. As will be explained below, the regulations could be strengthened and expanded to achieve these worthwhile objectives.

A. Procedural Objections

We described in great detail by letter dated August 17, 2017 that the parents of the 1.3 million EL students enrolled in our schools have been summarily excluded from this process by the failure of the SBE to translate the proposed regulations, the ISR and the Notice of Rulemaking into languages other than English. As a result of this failure, the SBE was in violation of both state and federal civil rights statutes and regulatory provisions, including: Title VI of the Civil Rights Act of 1964, 20 U.S.C. 2000d, and its implementing regulations at 34 C.F.R. § 100.3(a); the Equal Educational Opportunities Act, 20 U.S.C. §§ 1701-1720; the Dymally-Allatorre Bilingual Services Act at Gov. Code § 7295; and Gov. Code § 11135. In that letter (which we incorporate into these comments and attach as Exhibit A) we asked that translation of these materials be completed immediately, made available to the public and a new notice and comment period be established to allow for input from the LEP community. The SBE responded on September 1, 2017 advising us that, "as a courtesy" the regulations had been posted in Spanish on the CA E.D.G.E. website. After some searching we were able to find them, however, there is no Spanish language notice on the opening page of the website – or on the website providing notice of the rulemaking activity – that would inform non-English speakers that the regulations are available in another language. Moreover, the translated material does not include the notice,

the comment deadlines, information about where to submit comments or the initial statement of reasons. It provides no meaningful opportunity for the LEP community to be involved.

Indeed, in light of the complexities involved with the development and provision of education programs, and the need to address the intersection between CA Ed.G.E. implementation and Local Control and Accountability Plan (LCAP) requirements, the California Department of Education (CDE) should have convened stakeholders meetings prior to issuing notice of the proposed regulations. Gov. Code § 11346.45. It is deeply troubling that the Department did not even attempt to comply with that section or, in the proposed regulations or statement of reasons "...state the reasons for noncompliance with reasonable specificity..." as required by Gov. Code 11346.45(c). This is particularly true since it is routinely the practice of the State Board and the CDE to convene stakeholder sessions on policy matters.

Recommendation:

We recommend that the full regulatory notice packet be translated and posted and that a new notice period be voted on and approved at the September 11, 2017 meeting of the State Board of Education.

B. Modifications to Title 5 of the California Code of Regulations

1) The Definition of "English Learner Parental Advisory Committee" Must be Expanded So That It is Consistent with Current Law.

In Section 11300(b) the following definition of "English learner parental advisory committee" is proposed:

> "English learner parent advisory committee," means the committee established by a school district or county superintendent of schools pursuant to Education Code sections 52063 and 52069, and Title 5 California Code of Regulations section 15495(b).

This definition should not be narrowly confined to advisory committee references related to the (LCAP). The ISR states, in part, that the "CA Ed.G.E. Initiative requires parent and community engagement regarding language acquisition programs and language programs as part of the process of developing a school district or county office of education LCAP, as required by LCFF" and therefore, the proposed definition "aligns to the LCFF and provides for consistent application in these regulations." (ISR at 3.)

While it is critical that the development of appropriate programs be included in the LCAP process, that mandate does not undermine, much the less dictate, the role that District-level English Learner Advisory Committees (DELAC) currently have under law. The definition should be expanded to include DELACs established pursuant to Educ. Code §§ 52176(b)-(c), 62002.5, 64001 and 5 CCR §11308(b) and (c).[1] It is important to reference these other provisions because they set forth the composition, roles and responsibilities of these committees beyond what is required in the provisions related to the development of the LCAP.[2]

"The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal. 3d 1379, 1387. Pursuant to Education Code and regulatory provisions DELACs "shall advise the school district governing board" on the "[d]evelopment of a district master plan for education programs and services for English learners" and the "[e]stablishment of district program, goals, and objectives for programs and services for English learners." 5 CCR §11308. Reading these provisions together, it is clear that, DELACs, regardless of the LCAP requirements, must be consulted with respect to the development of language acquisition programs proposed by any District pursuant to CA Ed.G.E.

Recommendation:

The proposed definition should be amended as follows:

> "English learner parent advisory committee," means the committee established by a school district or county superintendent of schools pursuant to Education Code sections 52063, ~~and~~ 52069, 52176 (b) and (c), 62002.5 and 64001(a) and Title 5 California Code of Regulations sections 11308 and 15495(b).

2) The Proposed Definition of "Language Acquisition Program" is Inconsistent with Educ. Code § 306.

As noted above, one of the primary purposes of CA Ed.G.E. is to provide our students with the opportunity to develop multilingual skills "that are necessary for our country's national security

[1] See the CDE webpage regarding DELACs, available at: http://www.cde.ca.gov/ta/cr/delac.asp.

[2] As part of its Federal Program Monitoring process, the CDE continues to monitor the establishment of both DELACs and site level English Learner Advisory Committees (ELAC) pursuant to Education Code §§ 52176, 64001 and 5 CCR §11308, as well as, Education Code § 52063. See the "California Department of Education English Learner (EL) On-site 2017-18 Program Instrument, pages 1-2, available at: http://www.cde.ca.gov/ta/cr/documents/elos1718v2.pdf.

and essential to conducting in diplomacy and international programs." The Initiative further emphasizes that "California has a natural reserve of the world's largest languages, including English, Mandarin, and Spanish, which are critical to the state's economic trade and diplomatic efforts. . ." Educ. Code § 300 (e) and (f). Unfortunately, the proposed regulations do not reflect the purposes related to multilingualism. Indeed, they do the opposite and over-promote the very program that was imposed by Proposition 227, Sheltered English Immersion (SEI).[3]

CA Ed.G.E, in Educ. Code § 306 (c) defines "language acquisition programs" as follows:

> "Language acquisition programs" refers to educational programs designed to ensure English acquisition as rapidly and as effectively as possible, *and that provide instruction to pupils on the state-adopted academic content standards*, including the English language development standards. The language acquisition programs provided to pupils shall be informed by research and *shall lead to grade level proficiency and academic achievement in both English and another language*. (Emphasis added).

It is clear from this definition that language acquisition programs, per the underlying intent of the Initiative, are to address English acquisition, access to the core curriculum, and proficiency in a language other than English. Section 306(c) further identifies three separate programs that fall within the definition. They include: 1) dual-language immersion programs; 2) transitional or developmental programs for EL students; and, 3) Structured English Immersion (SEI) programs for EL students. Educ. Code § 306 (c)(1)-(3). Both dual language immersion programs and transitional/developmental programs for EL students provide academic instruction in languages other than English. SEI programs do not. The Initiative makes clear that SEI programs are the "minimum" that school districts are to provide EL students to ensure that they have access to the core curriculum and become proficient in English. Educ. Code § 305 (a)(2).

Contrary to Educ. Code § 306(c), Section 11300(d) of the proposed regulations narrows the definition of "language acquisition programs" by suggesting that such programs focus solely on English acquisition and content instruction solely through English Language Development (ELD). It makes no mention of academic instruction in languages other than English or the CA

[3] Under Proposition 227, SEI programs were defined as "an English acquisition process for young children in which nearly all classroom instruction is in English but with the curriculum and presentation designed for children who are learning the language."

Ed.G.E. goal of "grade level proficiency and academic achievement in both English and another language."

> "Language acquisition programs" are educational programs designed for English learners to ensure English acquisition as rapidly and effectively as possible, that *provide instruction to these pupils on the state-adopted academic content and ELD standards through Integrated and Designated ELD*, and that meet the requirements described in section 11309 of this subchapter. (Emphasis added).

Three programs are explicitly identified in the Initiative as meeting the definition of "language acquisition program" yet, only the "minimum" --Proposition. 227 preferred -- SEI program is defined in the proposed regulations. (Section 11300(m)) The proposed regulations borrow the language from Section 306(c)(3) and defines SEI programs as "a language acquisition program, where nearly all instruction is provided in English..." According to the ISR this regulatory definition was added "to facilitate access to the definition of "Structured English Immersion (SEI)," in EC sections 305(a)(2) and 306(c)(3)." If the intent was to facilitate access to the definition of SEI programs, then it should have done more than merely regurgitate verbatim the definition found in Section 306(c)(3). Including this definition, and excluding those for the other programs identified in CA Ed.G.E., suggests that districts may rely on SEI alone, or make it a preferred program and still fulfill their obligations under the law. Of course, this is not the case and is exactly what CA Ed.G.E. was designed to change.

The proposed regulations fail to even mention, much less define, dual-language immersion programs or transitional/developmental programs for EL students or any program that would ensure "academic achievement in both English and another language." Why was there no need to "facilitate access" to their definitions as found in Educ. Code §§ 306(c)(1) and (2)? It appears that by providing a definition for SEI programs and ignoring the others, the purpose was to elevate SEI programs to a status that was not intended by, and is in fact at odds with, CA Ed.G.E..

Proposed regulation Section 11300(e) further muddies the water by introducing a new category of programs referred to as "language programs," which are defined as:

> . . . programs that are designed to provide opportunities for pupils to be instructed in languages other than English to a degree sufficient to produce proficiency in those languages, consistent with the provisions of Education Code section 305, subdivision (c).

According to the ISR, this separate definition is needed "to distinguish between "language programs" and "language acquisition programs," which are designed for English learners." (ISR at 3.) However, Educ. Code § 305 addresses second language acquisition for all students, including EL students. One must ask which programs are then included in § 11300(e)? None are identified. Do dual-language immersion programs fall under this definition? It is difficult to tell because dual-language immersion programs also enroll EL students and are designed to both produce proficiency in a second language and high academic achievement. Educ. Code § 306(c)(1).

Because of the vagueness of the proposed language, it is unclear what definition a dual-language immersion program or a transitional/developmental program for EL students would fall under.

It is clear that the proposed definition of "language acquisition program" must be amended so that it is not limited to SEI programs and includes those programs, such as dual-language immersion and transitional or developmental programs, which lead to grade level proficiency and academic achievement in both English and another language.[4]

Recommendations:

Proposed regulation § 11300 (d) should be amended to read as follows:

> "Language acquisition programs" are educational programs designed ~~for English learners~~ to ensure English acquisition as rapidly and effectively as possible for English learners, that provide instruction to ~~these~~ pupils on the state-adopted academic content and ELD standards through Integrated and Designated ELD, and shall lead to grade level proficiency and academic achievement in both English and another language. Such programs include, but are not limited to: dual-language immersion, transitional or developmental programs for English learners, and Structure English immersion. Such programs ~~that~~ shall meet the requirements described in section 11309 of this subchapter.

Proposed regulation § 11300 should also be amended to include the following definitions for both dual-language immersion programs and transitional/developmental programs for EL students:

> (n) Dual-language immersion programs means a language acquisition program that provides integrated language learning and academic instruction for native speakers of English and native speakers of another language, with the goals of

[4] It should be noted that "language programs" are not subject to Sections 11309 or 11311, and therefore have less programmatic requirements and are not subject to the parental request requirements. Section 11312 only allows for feedback about which languages will be provided for a "language program" but not the content of the programs.

high academic achievement, first and second language proficiency, and cross-cultural understanding.

(o) Transitional or developmental programs for English learners means language acquisition programs that provide instruction to pupils that utilizes English and a pupil's native language for literacy and academic instruction and enables an English learner to achieve English proficiency and academic mastery of subject matter content and higher order skills, including critical thinking, in order to meet state-adopted academic content standards.

3) Section 11300 Should Include a Definition of English Learner.

Educ. Code § 306(a) defines an EL student as follows: "'English learner' means a pupil who is 'limited English proficient' as that term is defined in the federal No Child Left Behind Act of 2001 (20 U.S.C Sec. 7801 (25))." This language does not provide adequate guidance with respect to the definition. However, it is clear that the underlying intent was to adopt the definition of English learner found under federal law.

Recommendation:

We recommend that a regulatory provision be added to Section 11300 to include the following definition:

> An English learner student is an individual: (A) who is aged 3 through 21; (B) who is enrolled or preparing to enroll in an elementary school or secondary school; (C) (i) who was not born in the United States or whose native language is a language other than English; (ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and (II) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or (iii) who 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 (D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—(i) the ability to meet the challenging state academic standards; (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or (iii) the opportunity to participate fully in society.

According to California's current State Plan the above definition is found under the federal "Every Student Succeeds Act."[5]

[5] See CDE's California's ESSA State Plan Drafts webpage, available at http://www.cde.ca.gov/re/es/plandrafts.asp. August 2017 ESSA State Plan Draft, pages 4-5.

4) Section 11301 Fails to Adequately Reflect the New Requirements Imposed on Districts Regarding the Development of Language Acquisition Programs During the LCAP Process.

Educ. Code § 305(a) provides that as part of the LCAP process "school districts and county offices of education shall *solicit input on*, and *shall provide to pupils*, effective and appropriate instructional methods, including, but not limited to, establishing language acquisition programs, as defined in Section 306." The three programs identified in Section 306 are "dual-language immersion programs," "transitional or developmental programs," and Structured English Immersion programs." Proposed § 11301(a) fails to include a reference to these programs instead requires only input "regarding the LEA's existing language acquisition programs and language programs, and establishing other such programs." This fails to capture the true intent of Ca Ed.G.E. which was to encourage the development of dual language acquisition programs in a landscape where very few schools have them due to restrictions imposed by Prop. 227. Section 11301(a) emphasizes existing programs while failing to require that districts provide any effective notice to parents or others about what other types of programs may be available.

Recommendation:

The regulation should be revised to track the language included in Educ. Code §§ 305 and 306, as follows:

> (a) As part of the development of the LCAP and annual updates, an LEA shall inform and receive input from stakeholders, including the English learner parent advisory committee and the parent advisory committee, regarding the LEA's existing language acquisition programs and language programs, and establishing other ~~such~~ programs including dual-language immersion programs, transitional or developmental programs, and Structured English Immersion programs.

5) The Proposed Regulations Governing a School District's Decision on Parental Requests for a New Language Acquisition Program Should Be Strengthened to Improve Notice and Avoid Delay.

a. The regulation should make clear the fact that a district must implement requested programs, to the extent possible.

Educ. Code § 310 states that parents "may choose a language acquisition program that best suits their child . . ." It further provides that when the parents of 30 pupils or more per school or the parents of 20 pupils or more per grade request a particular language acquisition program, a school "shall be required to offer such a program to the extent possible . . ." Given the language

of the Initiative, the burden is on a school district to justify why parental requests for a particular language acquisition program will not be honored when the numerical triggers have been met. The proposed regulations fail to adequately reflect this burden and should, but do not, provide minimum guidelines to determine what is meant by the phrase "to the extent possible." They must be revised to do so and to make clear that the presumption is that the school will provide the requested program.

Recommendation:

This could be addressed in Section 11311 by adding the following language as new subsection

> (a) A LEA shall establish and allow enrollment in any language acquisition programs requested by parents in accordance with Educ. Code § 310, to the extent possible.

Clarification of the circumstances under which a district may deny a request is critical to the uniform implementation of the requirements of CA Ed.G.E.. Section 11311(g)(2) states that when the numerical triggers have been met, a school district shall, "Identify resources necessary to implement a language acquisition program, including but not limited to certificated teachers with the appropriate authorizations, necessary instructional materials, pertinent professional development for the proposed program, and opportunities for parent and community engagement to support the proposed program goals." However, it does not explain how these resources would factor into a determination that it is possible or not possible to implement the requested program immediately or in the future. The regulations must be augmented to address this deficiency.

b. The regulations should clarify and strengthen the type and form of notice required when a school district denies a parental request for a language acquisition program.

The proposed notice provisions are also inadequate. Section 11311(g)(3)(B) of the proposed regulation, applying to language acquisition programs, reads:

> [i]n the case where the LEA determines it is not possible to implement a language acquisition program requested by parents, the LEA shall provide an explanation of the reason(s) the program cannot be implemented in the school and may offer an alternate option that can be implemented at the school.

The regulations must be modified to specify the form that the denials are required to take as well as their content. All explanations of denial should be required to be in writing.

Furthermore, § 11311(g)(3)(B) is inadequate to the extent that it contains no requirement that the explanation be reasonable or delineate specific reasons, saying only that the denying school district "may" offer an alternative. Particularly given that the school district is given 90 days to respond, a substantial widow, the requesting parties are entitled to a reasonable explanation that they can understand and respond to. For context, under the parental waiver section of the current regulations § 11309, which is rendered unnecessary by the repeal of Proposition 227:

> [p]arents and guardians must be provided with a full written description and, upon request from a parent or guardian, a spoken description of the structured English immersion program and any alternative courses of study and all educational opportunities offered by the school district and available to the pupil.

Similar standards should apply here. This type of notice is necessary to create the type of parental engagement envisioned by CA Ed.G.E.. It also provides parents a basis on which to challenge decisions with which they do not agree.

e. A response time of 90 days to act on parental requests encourages needless delay.

Under § 11311(g)(3) of the proposed regulations, school districts are given 90 days to respond to parental requests for language acquisition programs. This time-frame nearly triples the allotted time for similar processes under Proposition 227. When parents sought waivers under Proposition 227, the comparable time frame read:

> [a]ll parental exception waivers shall be acted upon by the school within twenty (20) instructional days of submission to the school principal. However, parental waiver requests under Education Code § 311(c) shall not be acted upon during the thirty (30)-day placement in an English language classroom. These waivers must be acted upon either no later than ten (10) calendar days after the expiration of that thirty (30)-day English language classroom placement or within twenty (20) instructional days of submission of the parental waiver to the school principal, whichever is later." § 11309.

A similar time-frame is needed under these regulations.

Recommendation:

The regulations should be revised to include a requirement that the district notify the requesting parent within five school days about whether the requested program is currently available, or whether the trigger for such a program has or has not been reached. Districts should have to similarly advise requesting parents within five school days after the threshold is met if that

occurs at a later time. Finally, the time within which the district must determine whether it is possible to implement the requested language acquisition program and provide notice, in writing, to parents of pupils attending the school, the school's teachers, and administrators, of its determination, should be reduced to 30 days.

d. The proposed regulations should provide parents with a method of appeal.

In the event that districts do not abide by the requirements of CA Ed.G.E. parents should have a mechanism for appeal that is speedy and effective. Because considerable time will have elapsed between the request and denial; and because failure to establish a program will necessarily be a district level decision; we propose that parents be allowed to appeal directly to the California Department of Education, or State Board of Education.

e. The proposed regulations should facilitate broader stakeholder engagement in the creation of language acquisition programs.

The purpose of § 11309 as proposed is to "connect Ed. Code § 305(a)(1), (2) and § 306(c) with the federal obligations for the creation, implementation and evaluation of language acquisition programs for English learners. The obligations detailed in [that] section are supported by 20 U.S.C. § 1703." (ISR at 5.) Largely, these obligations are exactly in keeping with the goals of CA Ed.G.E, but more could be done to encourage stakeholder engagement.

f. Proposed Regulation § 11311(i) is Inconsistent with Educ. Code § 310.

Section 11311(i) of the proposed regulations reads as follows:

> A school *may* consider requests from parents of pupils enrolled in the school who are native speakers of English when determining whether a threshold specified in subdivision (g) is reached. (Emphasis added.)

Educ. Code § 310 does not make a distinction between parents of EL students and parents of native speakers of English with respect to determining the numerical triggers. Rather the provision refers broadly to "parents or legal guardians of pupils." This is of particular importance with respect to a request for a dual-language immersion program. As noted above, although the proposed regulations do not acknowledge such programs as a "language acquisition program," the statute does and defines such programs as:

> Dual-language immersion programs that provide integrated language learning and academic instruction for native speakers of English and native speakers of another language, with the goals of high academic achievement, first and second language proficiency, and cross-cultural understanding. Educ. Code § 306(c)(1). (Emphasis added.)

The statute certainly requires that the parents of native English speakers be given the opportunity to request a dual-language immersion program along with the parents of EL students. Allowing a school district to not consider requests from the parents of native English speakers when determining numerical triggers would be inconsistent with the statute and would basically mean that dual-language immersion programs would rarely be implemented.

Recommendation:

Proposed regulation § 11311(i) should read as follows:

> A school shall consider requests from parents of pupils enrolled in the school who are native speakers of English when determining whether a threshold specified in subdivision (g) is reached.

6) Section 11316 Should be Clarified to Ensure That Notice is Provided in the Primary Language Whenever Practicable.

School districts are required to comply with the anti-discrimination provisions of various state and federal laws, many of which make clear that an agency receiving state or federal funding must provide effective notice of key programs, irrespective of whether an arbitrary threshold is met in any particular language. Title VI of the Civil Rights Act of 1964, 20 U.S.C. 2000d, and its implementing regulations at 34 C.F.R. § 100.3(a). "School districts and S[tate] E[ducational] A[gencies] have an obligation to ensure meaningful communication with LEP parents in a language they can understand and to adequately notify LEP parents of information about any program, service, or activity of a school district or SEA that is called to the attention of non-LEP parents."[6] See also, the Equal Educational Opportunities Act, 20 U.S.C. §§ 1701-1720. Gov. Code § 11135 mandates that students and parents be provided "full and equal access to the benefits of" and not be "unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency." The proposed

[6] Dear Colleague Letter - Guidance to Ensure English Learner Students Have Access to a High-Quality Education, Office for Civil Rights and Department of Justice, (Jan. 7, 2015) page 37. Available at: https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf.

regulations, in fact, cite to some of these obligations, but then impose only the minimum standard for compliance with language access obligations by referring to Educ. Code § 48985 which requires translation only at school sites where 15% or more of students enrolled speak a single primary language other than English. This is simply not adequate when drafting a regulation that is expressly designed to provide notice to and elicit input from non-English speakers about programs for their children.

Recommendation:

We propose that Section 11316 be revised to ensure that translated notices are provided unless it would be an unreasonable burden to do so.

> § 11316. Language of Parental Notice to Parents ~~or Guardians~~.
>
> All notices and other communications to parents ~~or guardians~~ required or permitted by these regulations must be provided in English and in the parents' ~~or guardians~~[1] primary language unless provision of such notice is impracticable.
>
> NOTE: Authority cited: Section 33031, Education Code. Reference: Section 313 and 48985, Education Code; Section 11135, Government Code; 20 U.S.C Section 1703(f) and 6318, 20 U.S.C. 2000d and 34 C.F.R. section 100.3(a).

III. CONCLUSION

We believe that it is of paramount importance that the implementation of the CA Ed.G.E. Initiative be in keeping with its stated values, allowing people from many different walks of life to engage in the rulemaking process. To that end, we hope that further efforts will be made to provide more opportunity for comment and consideration by issuing a new notice, in appropriate languages, and consider convening hearings or stakeholder meetings for input from those communities. We are encouraged by the development of a system that allows all parents to request a language acquisition program that best fits their children's educational needs. In order for the program to meet its potential, schools must include all interested parents in the development of programs, provide meaningful notice of the program election process and not be permitted to simply deny these requests without meaningful explanation.

cc: Members, State Board of Education
Tom Torlakson, State Superintendent of Public Instruction

EXHIBIT A

ASIAN AMERICANS ADVANCING JUSTICE LOS ANGELES

CRLA

LSC

DOLORES HUERTA FOUNDATION

LAWYERS' COMMITTEE FOR CIVIL RIGHTS

LEGAL AID AT WORK

LEGAL AID FOUNDATION OF LOS ANGELES

LEGAL SERVICES of NORTHERN CALIFORNIA

PolicyLink

Aug. 17, 2017

Dr. Michael W. Kirst, President
State Board of Education
1430 N Street, Room 5111
Sacramento, CA 95814-5901
sbe@cde.ca.gov

Re: The State Board of Education Must Make the "Notice of Proposed Rulemaking–Amendment to California Code of Regulations, Title 5, Regarding *California Education for a Global Economy Initiative*" Accessible to the Parents of English Learner Students.

Dear President Kirst and State Board of Education Members:

We write to you as a coalition of community-based groups, educational organizations, public interest law firms and civil rights organizations concerned about the failure of the State Board of Education (SBE) to provide the Limited English Proficient (LEP) parents of California's English Learner (EL) students meaningful access to the regulatory process regarding an issue of utmost importance to the education of their children.

As you are aware, in November 2016, the citizens of California voted overwhelmingly to repeal Proposition 227 and to replace it with Proposition 58, also known as the California Education for a Global Economy (CA Ed.G.E.) Initiative.[1] Proposition 227 required that "all children in California public schools shall be taught English by being taught in English." In sharp contrast the CA Ed.G.E. Initiative recognizes that multilingual learning is beneficial for all students as well as a coveted ability in the broader California economy. To that end, it allows EL students to develop skills that lead to their proficiency in English and another language. The Initiative also recognizes the role of LEP parents to determine the program best suited to address the language needs of their children, "All parents will have a choice and voice to demand the best education for their children, including access to language programs that will improve their children's preparation for college and careers, and allow them to be more competitive in a global economy." (Educ. Code § 300 (k)).

[1] Proposition 58 won by the largest margin of any other initiative on the ballot, with 73.5% of California votera voting in favor of the initiative and 26.5 voting against it.

The SBE's "Notice of Proposed Rulemaking" concerning the CA Ed.G.E. Initiative was posted on the California Department of Education's (CDE) website on July 28, 2017. The 45-day Public Comment period began on July 29, 2017, and ends on September 11, 2017.[2] The proposed regulations amend some existing regulations and include several new provisions to Title 5 of the California Code of Regulations (CCR) related to the education of EL students, including Sections 11300, 11301, 11309, 11310, 11311, 11312 and 11316. Proposed amendments to §11300 include several new definitions, including how "Parents" and "Parent advisory committee" are defined. Section 11309 is amended to address language acquisition programs identified under the Initiative. Several of the proposed provisions directly address the role of parents and other stakeholders in choosing the language acquisition programs to be made available within a school district. Proposed regulation § 11301 -- "Community Engagement"-- refers to the process for receiving input from parents through the development of a school district's Local Control and Accountability Plan (LCAP). Proposed regulation § 11310 – "Parental Notice" -- details how parents are to be notified of the language acquisition programs to be provided by a school district. Proposed regulation § 11311 -- "Parental Requests for Language Acquisition Programs" -- addresses how school districts are to establish a process to receive and respond to parental requests to establish specific language acquisition programs. All of these proposed regulations are of utmost importance to the parents of EL students in determining how they can meaningfully exercise their rights as parents to advocate for programs to meet the educational needs of their children. These parents should have a meaningful opportunity to learn about and to comment on how the State should implement an initiative that was passed for the benefit of their children. It is deeply ironic that a fundamental purpose of CA Ed.G.E. initiative is to provide greater opportunity for EL students and their parents, yet all of the rulemaking information is publicly available solely in English.

The SBE must acknowledge that California has the largest EL student population in the United States and to conduct its business accordingly. Approximately 21.4% of all students enrolled in California schools are identified as EL. Another 21.3% of all students enrolled in California schools are Fluent English Proficient (FEP), which means that 43% of all California students come from homes where English is not the primary language. Of the approximately 1.3 million EL students enrolled in California public schools, 83.1% are Spanish speaking. The next two largest EL student language groups are: 1) Vietnamese (2.1%); and, 2) Mandarin (1.6%).[3] Of the approximately 1.3 million FEP students enrolled in our public schools, 72.6% come from homes were Spanish is the primary language. The next two largest FEP language groups include: 1) Vietnamese (4.0%); and, 2) Mandarin (3.0%).[4] Despite this large representation of non-

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[2] See, CDE website page "Rulemaking documents relating to the California Education for a Global Economy Initiative" http://www.cde.ca.gov/re/lr/rr/caedgeinitiative.asp.

[3] See, CDE DataQuest report entitled, "English Learner Students by Language by Grade – State of California – 2016-17" available at: http://data1.cde.ca.gov/dataquest/SpringData/StudentsByLanguage.aspx?Level=State&TheYear=2016-17&SubGroup=All&ShortYear=1617&GenderGroup=B&CDSCode=00000000000000&RecordType=EL.

[4] See, CDE DataQuest report entitled, "Fluent-English-Proficient Students by Language by Grade – State of California – 2016-17" available at:

English speakers and concentration of Spanish speakers the SBE has published and advertised these regulatory proposals, notices of meetings, and requests for comment in English only.

Optimally, the State Board should provide information in the languages of the top ten language groups of our EL students, which include: Spanish, Vietnamese, Mandarin, Filipino, Arabic, Cantonese, Korean, Hmong, Punjabi and Russian. But it is particularly baffling that it would not be provided in Spanish, given that state-wide 1,107,214 EL students speak Spanish. An additional 961,418 students are classified as FEP Spanish speakers. In total, 2,068,632 students, or 33%, of all students enrolled in California schools come from homes where Spanish is the primary language. At a minimum, some effort should have been made to meaningfully include the parents of these children in this regulatory process, but no such effort was made. Instead, the manner in which the State Board has undertaken this rulemaking process undermines the stated Legislative intent of the CA Ed.G.E. Initiative, which is premised on the fact that California has a moral and constitutional obligation to provide educational programs for all students regardless of ethnicity or national origin that ensure that they obtain the highest quality education, master the English language, and have access to high quality, innovative, and research-based language programs. (Educ. Code § 300 subsections (h), (n)). It also violates federal and state laws that are designed to ensure equal access to services provided by the State and its agencies.

The SBE is required under federal law to ensure that limited and non-English speaking parents are provided and receive important information provided to other parents in a language they can understand. (Title VI of the Civil Rights Act of 1964, 20 U.S.C. 2000d, and its implementing regulations at 34 C.F.R. § 100.3(a)). "School districts and S[tate] E[ducational] A[gencies] have an obligation to ensure meaningful communication with LEP parents in a language they can understand and to adequately notify LEP parents of information about any program, service, or activity of a school district or SEA that is called to the attention of non-LEP parents."[5] (See also, the Equal Educational Opportunities Act, 20 U.S.C. §§ 1701-1720). Under the Dymally-Alatorre Bilingual Services Act, state agencies have an obligation to ensure that any materials explaining services to the public be translated into any non-English language spoken by a substantial number of the public served by the agency.[6] (Gov. Code § 7295). Gov. Code § 11135 mandates that students and parents be provided "full and equal access to the benefits of" and not be "unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency. . . ."

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http://dq.cde.ca.gov/dataquest/SpringData/StudentsByLanguage.aspx?Level=State&TheYear=2016-17&SubGroup=All&ShortYear=1617&GenderGroup=B&CDSCode=00000000000000&RecordType=FEP.

[5] Dear Colleague Letter - Guidance to Ensure English Learner Students Have Access to a High-Quality Education, Office for Civil Rights and Department of Justice, (Jan. 7, 2015) page 37, available at: https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf.

[6] See, CDE's "Language Services Policy of the Department" available at: http://www.cde.ca.gov/re/di/eo/languageservices.asp.

Given the above, we therefore request that the SBE immediately devote resources to translate the public documents related to the CA Ed.G.E Initiative rulemaking process into the top ten languages spoken by California's EL students and that they be posted as soon as possible on the CDE's rulemaking website. We also request that the time to submit comments with respect to the CA Ed.G.E Initiative proposed regulations be suspended until such time as the translated versions are posted, with a new extended 45-day comment period.

Compounding the problem with respect to EL parent access to the regulatory process is the fact that the public hearing concerning these regulations will be held at 1:30 p.m. on September 11, 2017. This is a weekday when many community members will be unable to attend because of work and family obligations. This timing makes it unlikely that the people most affected by the proposed regulations will be able to meaningfully engage in the rulemaking process. This exclusion is particularly nonsensical given that the proposed regulations purport to encourage stakeholder engagement. To address the unlawful exclusion of EL parents, we ask that the Special Hearing now scheduled for September 11th be postponed and that two hearings be scheduled once the translated versions of the rulemaking materials are posted. One hearing should be held in Northern California and the other should be held in Southern California on days and times that are more accessible to working immigrant parents.

In conclusion, we request that you take the necessary steps to come into compliance with your obligations under state and federal law to translate these important documents for the State's LEP parents and that the comment period be extended and hearing process be revised to address the needs of the parents of EL students. Please inform us by August 25, 2017, whether you intend to come into compliance with the law. If you have any questions about our request, please contact either Cynthia Rice or Deborah Escobedo through the contact information provided below.

Thank you for your consideration,

Deborah Escobedo

Cynthia L. Rice

Deborah Escobedo Senior Attorney,
Racial Justice-Education
Lawyers' Committee for Civil Rights
131 Steuart Street, Suite 400
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Cynthia L. Rice, Director of Litigation,
Advocacy & Training
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On behalf of:

Betty Hung, Policy Director
Asian Americans Advancing Justice | Los Angeles

Dolores Huerta, President
Dolores Huerta Foundation

Marisa Diaz, Staff Attorney
Christopher Ho, Senior Staff Attorney
Stacy Villalobos, Skadden Fellow
Legal Aid at Work

Joann H. Lee, Directing Attorney
Legal Aid Foundation of Los Angeles

Jill E. Sowards, Staff Attorney
Legal Services of Northern California

Jordan Thierry, Senior Program Associate
PolicyLink

cc: The Honorable Tom Torlakson, State Superintendent of Public Instruction
Karen Stapf Walters, Executive Director, State Board of Education
Judy M. Cias, Chief Counsel, State Board of Education

Lorrie Kelling

From: Patricia Alverson
Sent: Monday, September 11, 2017 2:10 PM
To: Lorrie Kelling; Elena Fajardo
Cc: Hillary Wirick
Subject: FW: Comments regarding the Proposition 58 Regulations
Attachments: caedgregs-JorgeCuevasAntillón.docx

From: Jorge CuevasAntillon [mailto:jorgecuevasantillon@gmail.com]
Sent: Monday, September 11, 2017 2:06 PM
To: Patricia Alverson <PAlverson@cde.ca.gov>
Subject: Comments regarding the Proposition 58 Regulations

Please see attached comments and suggestions to improve the proposed regulations.
Thank you.

-Jorge Cuevas Antillón, Dual Language Education, College of Education, San Diego State University

The State Board of Education has illustrated changes to the original text in the following manner: text originally proposed to be added is underlined; text proposed to be deleted is displayed in ~~strikeout~~.

Title 5. EDUCATION

Division 1. California Department of Education

Chapter 11. Special Programs

Subchapter 4. English Language Learner Education

§ 11300. Definitions.

~~"School term" as used in Education Code section 330 means each school's semester or equivalent, as determined by the local governing board, which next begins following August 2, 1998. For multitrack or year round schools, a semester or equivalent may begin on different days for each school track.~~

(a) "Designated English Language Development (D-ELD)" means instruction provided during a protected time during the regular school day, in which there is a focus on state-adopted English language development (ELD) standards to assist English learners to develop critical English language skills necessary for academic content learning in English.

(b) "English learner parent advisory committee," means the committee established by a school district or county superintendent of schools pursuant to Education Code sections 52063 and 52069, and Title 5 California Code of Regulations section 15495(b).

(c) "Integrated English Language Development (I-ELD)" means instruction in which the state-adopted ELD standards are used in tandem with the state-adopted academic content standards. Integrated ELD includes specially designed academic instruction in English.

(d) "Language Aacquisition Pprograms (LAPs)" are educational programs designed for English learners to ensure English acquisition as rapidly and effectively as possible, that provide instruction to these pupils on the state-adopted academic content and ELD standards through Integrated and Designated ELD, and that meet the requirements described in section 11309 of this subchapter.

(e) "Multilingual ~~Language~~ Programs (MLPs)" are~~-~~ Language Acquisition Pprograms that are designed to provide opportunities for pupils to be instructed in languages other

than English to a degree sufficient to produce proficiency in those languages, consistent with the provisions of Education Code section 305, subdivision (c). Multilingual Programs include **Dual Language Immersion, Transitional and Developmental Language Acquisition Programs.**

Commented [1]: These should be defined.

Commented [2]: These should be defined.

(f) "Local control and accountability plan (LCAP)" means the plan created by a local educational agency (LEA) pursuant to Education Code sections 52060 or 52066, as applicable to the LEA.

(g) "Local educational agency (LEA)" means a school district or county office of education.

(h) "Parent advisory committee (PAC)" means a committee established by a school district or county superintendent of schools pursuant to Education Code sections 52063 or 50269.

(i) "Parents" means the natural or adoptive parents, legal guardians, or other caretakers~~persons~~ holding the right to make educational decisions for the pupil pursuant to Welfare and Institutions Code section 361 or 727, or Education Code section 56028 or 56055, including foster parents who hold rights to make educational decisions.

(j) "Stakeholders" means parents, pupils, teachers, administrators, other school personnel, and interested members of the public.

(k) "State-adopted academic content standards" means the subject matter covered in Education Code sections 18100, 18101, 51210.2, 51222, 60605, 60605.1, 60605.2, 60605.3, 60605.4, 60605.5, 60605.8, 60605.11, and 60605.13.

(l) "State-adopted English language development (ELD) standards" means standards adopted pursuant to Education Code section 60811.

(m) "Structured English Immersion (SEI)" means a L~~l~~anguage A~~a~~cquisition P~~p~~rogram, where nearly all instruction is provided in English, with a curriculum and presentation designed for pupils who are learning English.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 305, 306, 310, 18100, 18101, 51210.2, 51222, 52060, 52063, 52064, 52066, 52067, 52068, 52069, 56028, 56055, 60605, 60605.1, 60605.2, 60605.3, 60605.4, 60605.5, 60605.8, 60605.11, and 60605.13, Education Code; Sections 361 and 727, Welfare and Institutions Code; Sections 11308, 15495(b), and 15496(f), Title 5 California Code of Regulations.

~~**§ 11301.Knowledge and Fluency in English.**~~

~~(a) For purposes of "a good working knowledge of English" pursuant to Education Code Section 305 and "reasonable fluency in English" pursuant to Education Code Section 306(c), an English learner shall be transferred from a structured English immersion classroom to an English language mainstream classroom when the pupil has acquired a reasonable level of English proficiency as measured by any of the state-designated assessments approved by the California Department of Education, or any locally developed assessments.~~

~~(b) At any time, including during the school year, a parent or guardian may have his or her child moved into an English language mainstream classroom.~~

~~(c) An English learner may be re-enrolled in a structured English immersion program not normally intended to exceed one year if the pupil has not achieved a reasonable level of English proficiency as defined in Section 11301(a) unless the parents or guardians of the pupil object to the extended placement.~~

~~NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 305 and 306(c), Education Code.~~

§ 11301. Community Engagement

(a) As part of the development of the LCAP and annual updates, an LEA shall inform and receive input from stakeholders, including the English Llearner Pparent Aadvisory Ccommittee (ELPAC) and the Pparent Aadvisory Ccommittee (PAC), regarding the LEA's existing language acquisition programs (Multilingual and SEI Programs) ~~and language programs~~, and establishing other such programs.

(b) An LEA process for informing stakeholders and receiving input may include procedures such as stakeholder surveys, forums, and meetings with school advisory committees, or other groups representing stakeholders.

(c) Prior to adoption of an LEA's LCAP, the school district superintendent or the county superintendent of schools shall include a written response to input received from the LEA's English learner parent advisory committee and parent advisory committee relating to language acquisition programs and language programs with the superintendent's response as described in Education Code sections 52062 and 52068.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 305, 306, 52060, 52062, 52063, 52066, 52067 and 52068, Education Code.

§ 11309. Parental Exception Waivers.

(a) In order to facilitate parental choice of program, all parents and guardians must be informed of the placement of their children in a structured English immersion program and must be notified of an opportunity to apply for a parental exception waiver. The notice shall also include a description of the locally-adopted procedures for requesting a parental exception waiver, and any locally-adopted guidelines for evaluating a parental waiver request.

(b) School districts shall establish procedures for granting parental exception waivers as permitted by Education Code sections 310 and 311 which include each of the following components:

(1) Parents and guardians must be provided with a full written description and upon request from a parent or guardian, a spoken description of the structured English immersion program and any alternative courses of study and all educational opportunities offered by the school district and available to the pupil. The descriptions of the program choices shall address the educational materials to be used in the different options.

(2) Pursuant to Education Code section 311(c), parents and guardians must be informed that the pupil must be placed for a period of not less than thirty (30) calendar days in an English language classroom and that the school district superintendent must approve the waiver pursuant to guidelines established by the local governing board.

(3) Pursuant to Education Code sections 311(b) and (c), the school principal and educational staff may recommend a waiver to a parent or guardian. Parents and guardians must be informed in writing of any recommendation for an alternative program made by the school principal and educational staff and must be given notice of their right to refuse to accept the recommendation. The notice shall include a full description of the recommended alternative program and the educational materials to be used for the alternative program as well as a description of all other programs available to the pupil. If the parent or guardian elects to request the alternative program recommended by the school principal and educational staff, the parent or guardian

~~must comply with the requirements of Education Code section 310 and all procedures and requirements otherwise applicable to a parental exception waiver.~~

~~(4) Parental exception waivers shall be granted unless the school principal and educational staff have determined that an alternative program offered at the school would not be better suited for the overall educational development of the pupil.~~

~~(c) All parental exception waivers shall be acted upon by the school within twenty (20) instructional days of submission to the school principal. However, parental waiver requests under Education Code section 311(c) shall not be acted upon during the thirty (30) day placement in an English language classroom. These waivers must be acted upon either no later than ten (10) calendar days after the expiration of that thirty (30) day English language classroom placement or within twenty (20) instructional days of submission of the parental waiver to the school principal, whichever is later.~~

~~(d) In cases where a parental exception waiver pursuant to Education Code sections 311(b) and (c) is denied, the parents and guardians must be informed in writing of the reason(s) for denial and advised that they may appeal the decision to the local board of education if such an appeal is authorized by the local board of education, or to the court.~~

~~(e) For waivers pursuant to Education Code section 311(a) and for students for whom standardized assessment data is not available, school districts may use equivalent measures as determined by the local governing board.~~

~~NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 305, 310 and 311, Education Code.~~

§ 11309. Language Acquisition Programs

(a) LEAs shall provide language acquisition programs for English learners consistent with these regulations.

(b) Whenever an LEA establishes a language acquisition program, the LEA shall confer with school personnel, including teachers and administrators with authorizations required to provide or oversee programs and services for English learners, regarding the design and content of the language acquisition program.

(c) Any language acquisition program provided by an LEA shall:

(1) Be designed using evidence-based research and include both Designated and Integrated ELD;

(2) Be allocated sufficient resources by the LEA to be effectively implemented, including, but not limited to certificated teachers with the appropriate authorizations, necessary instructional materials, pertinent professional development for the proposed program, and opportunities for parent and community engagement to support the proposed program goals; and

(3) Within a reasonable period of time, lead to:

(A) Proficiency in English, and, if applicable, another language; and

(B) Achievement of the state-adopted content standards in English, and, if applicable, another language.

(d) At minimum, an LEA shall provide a program of SEI for English learners.

(e) An LEA may provide language acquisition programs in addition to SEI, including programs that integrate instruction for native speakers of English and native speakers of another language, and meet the requirements of subdivision (c).

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 305, 306, 44253.3, and 44253.4, Education Code; 20 U.S.C. Sections 1703 and 6311.

~~**§ 11310. State Board of Education Review of Guidelines for Parental Exception Waivers.**~~

~~(a) Upon written request of the State Board of Education, school district governing boards shall submit any guidelines or procedures adopted pursuant to Education Code section 311 to the State Board of Education for its review.~~

~~(b) Any parent or guardian who applies for a waiver under Education Code section 311 may request a review of the school district's guidelines or procedures by the State Board of Education. The sole purpose of the review shall be to make a determination as to whether those guidelines or procedures comply with the parental exception waiver guidelines set forth in Section 11309.~~

~~NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 305, 310 and 311, Education Code.~~

§ 11310. Parental Notice.

(a) An LEA shall notify parents of the language acquisition programs and any language programs provided by the LEA at the time and in the manner specified in Education Code sections 48980 and 48981. The notice specified in this section shall

include a description of the process for parents to request a language acquisition program or language program for their child.

(b) The notice for language acquisition programs shall include:

(1) A description of any such programs provided, including SEI;

(2) Identification of any language to be taught in addition to English, if applicable; and

(3) The information set forth in section 11309(c).

(c) The notice for language programs shall specify the language(s) to be taught, and may include the program goals, methodology used, and evidence of the proposed program's effectiveness.

(d) Parents of pupils enrolling in the LEA after the beginning of the academic school year shall be provided the notice described in subdivision (a) upon enrollment. An LEA may provide notice to parents at additional times throughout the year.

(e) The notice to parents pursuant to this section shall be provided as described in subdivision (a). Additionally, verbal notice shall be provided, upon request, as reasonably necessary to effectuate notice to the parents.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 305, 306, 310, 48980, and 48981, Education Code; 20 U.S.C. sections 1703(f), 6311 and 6318.

§ 11311. Parent Requests for Language Acquisition Programs.

(a) An LEA shall define and name language acquisition programs available per site via information easily accessible to the public. Additionally, the LEA shall establish a process for schools of the LEA to receive and respond to requests from parents of pupils enrolled in the school to establish language acquisition programs other than, or in addition to, such programs already provided at the school. The LEA process shall require each school to make a written record of each request, including at least the following:

(1) The date of the request;

(2) The names of the parent and pupil;

(3) A general description of the request; and

(4) The pupil's grade level on the date of the request.

(b) Each school shall maintain a written record of verbal requests that includes the information set forth in subdivision (a).

(c) Each school shall assist parents in clarifying requests, such as program type, as needed.

(d) Each school shall retain written records of parent requests for language acquisition programs for at least three years from the date of the request.

(e) A parent whose pupil is enrolled in a school for attendance in the next school year may submit a request for a particular language acquisition program.

(f) Each school shall monitor the number of parent requests for any language acquisition programs on a regular basis, and notify the LEA immediately upon reaching a threshold specified in subdivision (g).

(g) When the parents of 30 pupils or more enrolled in a school, or when the parents of 20 pupils or more in the same grade level enrolled in a school, request the same or substantially similar type of a language acquisition program, the LEA shall respond by immediately taking the following actions:

(1) Notify the parents of pupils attending the school, the school's teachers, and administrators, in writing, of the parents' requests for a language acquisition program, including formal notification to the LEA ELPAC and PAC;

(2) Identify costs and resources necessary to implement any new language acquisition program, including but not limited to certificated teachers with the appropriate authorizations, necessary instructional materials, pertinent professional development for the proposed program, and opportunities for parent and community engagement to support the proposed program goals; and

(3) Determine, within 90 calendar days of reaching the threshold described in subdivision (g), whether it is possible to implement the requested language acquisition program; and provide notice, in writing, to parents of pupils attending the school, the school's teachers, and administrators, of its determination;

(A) In the case of an affirmative decision to implement a language acquisition program at the school, create and publish a reasonable timeline of actions necessary to implement the language acquisition program.

(B) In the case where the LEA determines it is not possible to implement a language acquisition program requested by parents, the LEA shall provide an explanation of the reason(s) the program cannot be provided, and may offer an alternate option that can be implemented at the school.

(h) Each school shall follow the process set forth in subdivision (f), even when the LEA provides the requested language acquisition program at another school of the LEA at the time the threshold specified in subdivision (g) is met.

(i) A school may consider requests from parents of pupils enrolled in the school who are native speakers of English when determining whether a threshold specified in subdivision (g) is reached.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 305 and 310, 44253.3, 44253.4, Education Code; 20 U.S.C., Section 1703(f).

§ 11312. Language Programs

If an LEA provides a language program or proposes to offer a language program, the LEA shall establish a process for schools of the LEA to receive and respond to input from parents and stakeholders regarding the non-English language in which instruction is provided.

NOTE: Authority cited: Section 33031. Reference: Section 305(c), Education Code.

§ 11316. Language of Parental Notice ~~to Parents or Guardians~~.

All notices and other communications to parents ~~or guardians~~ required or permitted by these regulations must be provided in English and in the parents' ~~or guardians'~~ primary language to the extent required under Education Code section 48985.

NOTE: Authority cited: Section 33031, Education Code. Reference: Section 313 and 48985, Education Code; 20 U.S.C Section 1703(f) and 6318.

6-28-17 [California Department of Education]

From: REGCOMMENTS
To: Elena Fajardo; Lorrie Kelling
Subject: FW: comments on CA EdGE (Prop. 58)
Date: Tuesday, September 05, 2017 1:43:12 PM

Hi,

Please see the comment below regarding the proposed regulations for CA EdGE.

Patti

From: Jessica Murray [mailto:jmurray@sccs.santacruz.k12.ca.us]
Sent: Monday, September 04, 2017 9:22 PM
To: REGCOMMENTS <REGCOMMENTS@cde.ca.gov>
Subject: comments on CA EdGE (Prop. 58)

To Whom It May Concern,

I am a secondary teacher and coach with over 20 years of experience teaching ELs. I wanted to share my comments on the CA EdGE proposed changes.

In Section 11300, Definitions:

The proposed addition and language in Parts a), b), d), and e) of the definitions, which define Designated ELD, Integrated ELD, and Language Acquisition Programs versus Language Programs are clear and well-stated. They are excellent additions to our state laws and regulations.

Thank you for gathering this input.

Best regards,
--
Jessica Murray
English Learner Instructional Resource Teacher (ELIRT), Secondary
Dept. of Curriculum, Instruction, and Assessment
Santa Cruz City Schools
405 Old San Jose Rd., Building 300
Soquel, CA 95073
(831) 429-3410 ext. 254
jmurray@sccs.net

"Progress begins with the belief that what is necessary is possible."
-- Norman Cousins

September 7, 2017

Patricia Alverson, Regulations Coordinator
California Department of Education
PAlverson@cde.ca.gov

Dear Ms. Alverson

Please find below suggested amendments to the regulations associated with Proposition 58, dealing with the education of English Learners.

The suggested amendments are highlighted in yellow and written in bold italics.
The two suggested amendments are directed to Section 11309 and Section 11311.

The amendment to Section 11309 addresses the need to ensure that schools offer instruction in the language other than English which is differentiated to the individual needs of second language learners (English-speakers in this instance) and native speakers of that language.

The amendment to Section 11311 addresses the reality that implementation of a requested language acquisition program can be denied or significantly delayed by a school for a broad number of reasons and parents have no statutorily defined recourse. When such programs are denied or significantly delayed by a school, parents should be provided, whenever possible, with the option to enroll pupils in a requested program at another school.

If you have any questions regarding these comments and suggestions, please contact me at your convenience.

Best Regards,

David P. Dotson, Ed.D.
Former Administrator, California Department of Education
Tel. (916) 214-7512

§ 11309. Language Acquisition Programs

(a) LEAs shall provide language acquisition programs for English learners consistent with these regulations.

(b) Whenever an LEA establishes a language acquisition program, the LEA shall confer with school personnel, including teachers and administrators with authorizations required to provide or oversee programs and services for English learners, regarding the design and content of the language acquisition program.

(c) Any language acquisition program provided by an LEA shall:

(1) Be designed using evidence-based research and include both Designated and Integrated ELD;

(2) Be allocated sufficient resources by the LEA to be effectively implemented, including, but not limited to certificated teachers with the appropriate authorizations, necessary instructional materials, pertinent professional development for the proposed program, and opportunities for parent and community engagement to support the proposed program goals; and

(3) Within a reasonable period of time, lead to:

(A) Proficiency in English, and, if applicable, another language; and

(B) Achievement of the state-adopted content standards in English, and, if applicable, another language.

(d) At minimum, an LEA shall provide a program of SEI for English learners.

(e) An LEA may provide language acquisition programs in addition to SEI, including programs that integrate instruction for native speakers of English and native speakers of another language, and meet the requirements of subdivision (c).

(f) When instruction is provided in and through a language other than English, such instruction shall be based on the assessed individual needs of the native speakers of English and the native speakers of the other language.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 305, 306, 44253.3, and 44253.4, Education Code; 20 U.S.C. Sections 1703 and 6311.

§ 11311. Parent Requests for Language Acquisition Programs.

(a) An LEA shall establish a process for schools of the LEA to receive and respond to requests from parents of pupils enrolled in the school to establish language acquisition programs other than, or in addition to, such programs provided at the school. The LEA process shall require each school to make a written record of each request, including at least the following:

(1) The date of the request;

(2) The names of the parent and pupil;

(3) A general description of the request; and

(4) The pupil's grade level on the date of the request.

(b) Each school shall maintain a written record of verbal requests that includes the information set forth in subdivision (a).

(c) Each school shall assist parents in clarifying requests, as needed.

(d) Each school shall retain written records of parent requests for language acquisition programs for at least three years from the date of the request.

(e) A parent whose pupil is enrolled in a school for attendance in the next school year may submit a request for a language acquisition program.

(f) Each school shall monitor the number of parent requests for language acquisition programs on a regular basis, and notify the LEA immediately upon reaching a threshold specified in subdivision (g).

(g) When the parents of 30 pupils or more enrolled in a school, or when the parents of 20 pupils or more in the same grade level enrolled in a school, request the same or substantially similar type of a language acquisition program, the LEA shall respond by immediately taking the following actions:

(1) Notify the parents of pupils attending the school, the school's teachers, and administrators, in writing, of the parents' requests for a language acquisition program;

(2) Identify resources necessary to implement a language acquisition program, including but not limited to certificated teachers with the appropriate authorizations, necessary instructional materials, pertinent professional development for the proposed program, and opportunities for parent and community engagement to support the proposed program goals; and

(3) Determine, within 90 calendar days of reaching the threshold described in subdivision (g), whether it is possible to implement the requested language acquisition program; and provide notice, in writing, to parents of pupils attending the school, the school's teachers, and administrators, of its determination;

(A) In the case of an affirmative decision to implement a language acquisition program at the school, create and publish a reasonable timeline of actions necessary to implement the language acquisition program.

(B) In the case where the LEA determines it is not possible to implement a language acquisition program requested by parents, the LEA shall provide an explanation of the reason(s) the program cannot be provided, and ***shall take reasonable steps to offer a suitable*** alternate option that can be implemented at the school ***as well as enrollment of pupils in the requested language acquisition option at another school in the LEA*** .

(h) Each school shall follow the process set forth in subdivision (f), even when the LEA provides the requested language acquisition program at another school of the LEA at the time the threshold specified in subdivision (g) is met.

(i) A school may consider requests from parents of pupils enrolled in the school who are native speakers of English when determining whether a threshold specified in subdivision (g) is reached.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 305 and 310, 44253.3, 44253.4, Education Code; 20 U.S.C., Section 1703(f).

Patricia Alverson, Regulations Coordinator
Administrative Support and Regulations Adoption Unit
California Department of Education
1430 N Street, Room 5319
Sacramento, CA 95814

Regarding: Input and Comments on the proposed Title V Regulations for *California Education for a Global Economy (CA Ed.G.E.)*

California State PTA shares with many other organizations both interest and excitement regarding the opportunities for expanded program options leading to multilingualism for all of California's students.

We endorse the following recommendations made by Californians Together in order to bring additional clarity and direction to the language of CA Ed.G.E. and believe they should be considered in modifying the proposed regulations.

1. **The definition of Parent Engagement must include and go beyond the advice of the English Learner Advisory Committee.** The LCAP process for parent engagement is an outreach to all parents not just advisory committees. In addition the language acquisition programs are for English Learners and parents of native English speakers. Only consulting the LCAP English Learner Advisory Committee does not include engagement of all parents and is a very limited definition for engagement in the process of establishing language acquisition programs.

2. **The definition of "Language Acquisition Program" is confusing and creates the new category of "Language Program" which is not referenced in CA Ed. G. E.** The regulations reference *language acquisition programs and language programs.* CA Ed. G. E. only specifies language acquisition programs and that definition includes "The language acquisition programs provided to pupils shall be informed by research and shall lead to grade level proficiency and academic achievement in both English and another language." This language should be included in the regulations and the *language program* should be deleted

3. **Definitions should include Dual Language Immersion, Transitional and Developmental Language Acquisition Programs.** The definitions must define all language acquisition programs not just Structured English Immersion.

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In addition, California State PTA makes the following comments and recommendations related to specific language in Title 5. Education, Division 1., Chapter 11. Special Programs, Subchapter 4. English Language Learner Education

Comment/Recommendation #1

Section 11300. Definitions. On Page 1, line 16 there is a reference to "protected time" during the regular school day in which there is a focus on state adopted English language development (ELD) standards to assist English learners. However, "protected time" is not defined.

PTA recommends that the CDE and State Board define "protected time" in further detail within the regulations that allows for public comment. Otherwise, teachers and parents will not know what to expect nor anticipate for each English learner in terms of their rights and access to ELD.

Comment/Recommendation #2

On Page 2, line 15 "Stakeholders" means parents, pupils, teachers administrators, other school personnel, and interested members of the public.

Comment/Recommendation – PTA recommends inserting "and families" after parents. We would make the same recommendation throughout the regulations wherever "parents" are referenced.

Comment/Recommendation #3

Section 11301 Community Engagement

Recommendation: On Page 3 beginning on line 18 amend to read:

(a) As part of the development of the LCAP and annual updates, an LEA shall inform and receive input from stakeholders, including the English learner parent advisory committee and the parent advisory committee, and other parent and family organizations on school sites including but not limited to the Parent Teacher Association, school site councils, and other groups, regarding the LEA's existing language acquisition programs and language programs, and establishing other such programs.

Comment/Recommendation #4

Section 11310 Parental Notice

Recommendation: Page 6, lines 31 and 32 amend to read:

.....The notice specified in this section shall include a description of the process for parents and families, along with the timeline and deadlines, to request a language acquisition program or language program for their child.

Respectfully submitted on behalf of California State PTA by
Mary Perry, Vice President for Education

Patricia Alverson, Regulations Coordinator
Administrative Support and Regulations Adoption Unit
California Department of Education
1430 N Street, Room 5319
Sacramento, CA 95814

Regarding: Input and Comments on the proposed Title V Regulations for *California Education for a Global Economy (CA Ed.G.E.)*

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Anya Hurwitz

WATTS/CENTURY LATINO ORGANIZATION
10360 Wilmington Ave. • Los Angeles, California 90002 • (323) 564-9140 • Fax (323) 564-2737

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Sincerely,

Arturo Ybarra
Executive Director

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California Department of Education
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Vanessa Calderon-Garcia
State Seal of Biliteracy District Coordinator
Learning Design Coach
Oxnard Union High School District
Vanessa.calderon@oxnardunion.org

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Patricia Alverson, Regulations Coordinator
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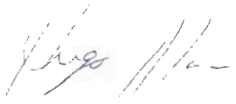

Hugo Morales

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UNITED TEACHERS LOS ANGELES

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Daniel Ward

Editor
Language Magazine
21361B Pacific Coast Hwy
Malibu CA 90265

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Claudia Lockwood (electronic signature)

From: Patricia Alverson
To: Lorrie Kelling; Elena Fajardo
Cc: Andrea Christensen
Subject: FW: Prop 58
Date: Thursday, September 07, 2017 2:49:45 PM

Hi,

I'm forwarding a public comment.

Patti

-----Original Message-----
From: Lopez-Mendez Veronika [mailto:vlopez-mendez@sandi.net]
Sent: Thursday, September 07, 2017 12:52 PM
To: Patricia Alverson - PAlverson@cde.ca.gov -
Subject: Prop 58

Patricia Alverson, Regulations Coordinator Administrative Support and Regulations Adoption Unit California Department of Education
1430 N Street, Room 5319
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Veronika Lopez-Mendez, Principal
Rosa Parks Elementary
vlopez-mendez@sandi.net

To: Patricia Alverson, Regulations Coordinator
Administrative Support and Regulations Adoption Unit
California Department of Education
1430 N Street, Room 5319
Sacramento, CA 95814

From: Xitlonin Cruz-Gonzalez
389 E. Sierra Madre Ave
Azusa CA 91702

9/11/2017

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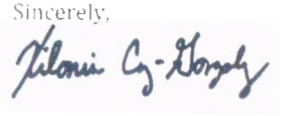

Xilonin Cruz-Gonzalez
Azusa USD Board of Education Vice-President
389 E. Sierra Madre Ave,
Azusa CA 91702
xilonin@gmail.com

September 11, 2017

Patricia Alverson, Regulations Coordinator
Administrative Support and Regulations Adoption Unit
California Department of Education
1430 N Street, Room 5319
Sacramento, CA 95814

Dear Ms. Patricia Alverson:

I have been in education with a focus on English Learners for nearly twenty years, and I am excited to see the proposed Title V Regulations for *California Education for a Global Economy (CA Ed.G.E.)*. Thanks to California Department of Education for this work.

There is much interest and excitement about the opportunities for expanded program options leading to multilingualism for all of California's students. The Title V regulations need to capture the intent and language of Proposition 58 to facilitate implementation. The following comments on the regulations are presented to bring additional clarity and direction to the language of CA Ed.G.E. and should be considered in modifying the proposed regulations.

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Best regards,

Vickie Ramos Harris
Montebello, CA
vickie.ramos.harris@gmail.com
213-394-9441

Carla B. Herrera
17313 Leslie Avenue
Cerritos, CA 90703
562-500-8820 Cell – cbherrera@mac.com

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Administrative Support and Regulations Adoption Unit
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September 11, 2017

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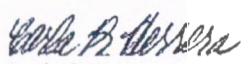
4. **Parent Notification, Procedures, Timeliness and Appeal Process.** There needs to be clarification that notification determining the language acquisition programs are for all parents to enroll their children. All notifications should be available in the languages spoken at that particular school. The timeline of 90 calendar days for a school to determine whether or not it is practicable to offer such a program is too long, could cause a year delay in program implementation and discourage parents to continue with their request. This period should not exceed 20-30 days. In the event the school decides it is not able to offer the program, there needs to be an appeal process delineated in the regulations.

I hereby request that the above issues be addressed in a new draft of regulations and another period of time be established for input on the modified regulations.

Thank you for your consideration.

Sincerely,



Carla B. Herrera
Retired Bilingual Educator
Two-Way Immersion Specialist and Consultant

Patricia Alverson, Regulations Coordinator
Administrative Support and Regulations Adoption Unit
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Regarding: Input and Comments on the proposed Title V Regulations for *California Education for a Global Economy (CA Ed.G.E.)*

There is much interest and excitement about the opportunities for expanded program options leading to multilingualism for all of California's students. The Title V regulations need to capture the intent and language of Proposition 58 to facilitate implementation. The following comments on the regulations are presented to bring additional clarity and direction to the language of CA Ed.G.E. and should be considered in modifying the proposed regulations.

1. **The definition of Parent Engagement must include and go beyond the advice of the English Learner Advisory Committee.** The LCAP process for parent engagement is an outreach to all parents not just advisory committees. In addition, the language acquisition programs are for English Learners and parents of native English speakers. Only consulting the LCAP English Learner Advisory Committee does not include engagement of all parents and is a very limited definition for engagement in the process of establishing language acquisition programs.

2. **The definition of "Language Acquisition Program" is confusing and creates the new category of "Language Program" is not reference in CA Ed. G. E.** The regulations reference *language acquisition programs and language programs.* CA Ed. G. E. only specifies language acquisition programs and that definition includes "The language acquisition programs provided to pupils shall be informed by research and shall lead to grade level proficiency and academic achievement in both English and another language." This language should be included in the regulations and the *language program* should be deleted.

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practicable to offer such a program is too long, could cause a year delay in program implementation and discourage parents to continue with their request. This period should not exceed 20-30 days. In the event the school decides it is not able to offer the program, there needs to be an appeal process delineated in the regulations.

I am requesting that the above issued be addressed in a new draft of regulations and another period of time be established for input on the modified regulations.

Martha Hernandez

Martha Hernandez
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