



December 29, 2020

Noe Ortega, Secretary of Education
Matthew Stem, Deputy Secretary
Robert Measel, ESL Director
Pennsylvania Department of Education
333 Market Street | Harrisburg, PA 17126
ra-educationsecretary@pa.gov; mastem@pa.gov; romeasel@pa.gov

Re: ***Request to Postpone WIDA ACCESS testing of English learners during the Pandemic***

Dear Secretary Ortega, Deputy Secretary Stem, and Director Measel,

We write today to urge you to postpone the in-person administration of the WIDA ACCESS test for emerging bilingual students (aka English learners) during the COVID-19 pandemic until it is safe to do so. As public health data amply demonstrate, these students and their families are disproportionately at risk of contracting the disease and the WIDA ACCESS in-person testing – which entails multiple separate test administrations for multiple hours over multiple days – places these students (and, in turn, their families) at imminent health risk and harm.

We ask that the Department of Education issue guidance to all school districts and charter schools concerning emerging bilingual students to inform parents, in English and in their relevant home languages, that in-person ACCESS testing is postponed at this time, or if not postponed that participation in such testing is completely voluntary and parents and students will not be punished, disciplined, penalized, reported, or otherwise sanctioned for their legitimate COVID-19 safety concerns. ***In a letter, WIDA recently informed the Lawyers' Committee for Civil Rights Under Law that it is willing to work with the states on extending testing into the summer of 2021.***

In support of this urgent life-saving request, we bring the following facts and circumstances to your immediate attention:

1. Statewide, public schools in Pennsylvania served 72,862 English learners during the 2019-2020 school year.¹ Most, if not all, of these students will be required to take the WIDA ACCESS assessment.
2. Most English learners in our state come from communities of color that are among the groups with the highest risk of being severely impacted by the pandemic. Nationally, according to the Centers for Disease Control (CDC), Latinx persons are almost three

¹ EL Students Counts by LEA and School, 2019-2020, available at <https://www.education.pa.gov/DataAndReporting/EnglishLearners/Pages/default.aspx>.

times more likely to die from COVID-19 than white, non-Hispanics, 1.7 times more likely to become infected, and 4.1 times more likely to be hospitalized. Black persons are also almost three times more likely to die from COVID-19, 1.4 times more likely to become infected, and 3.7 times more likely to be hospitalized. Asians are 1.1 times more likely to die from COVID-19 and 1.2 times more likely to be hospitalized.² Perhaps even more alarming, Latinx children are approximately eight times, and Black children five times, more likely to be hospitalized with COVID-19 than white children.³

3. The Pennsylvania Department of Health has recognized “the disproportionate socioeconomic and racial/ethnic impact of the pandemic on the Latinx and Black or African American communities.”⁴
4. Immigrants, who also may constitute a high percentage of emerging bilingual students, are also at a disproportionately higher risk of becoming infected and developing severe or fatal COVID-19 symptoms because of the confluence of vulnerabilities such as: high rates of poverty; limited access to healthcare; multigenerational households; employment in essential jobs; and fear of legal repercussions. For example, a research study determined that being a recent Latinx immigrant to the United States was the biggest predictor of being infected by COVID-19. This predictor was followed by living in a large household and working in the food service industry – common factors for homes of emerging bilingual students.⁵
5. Data also discloses that Black and Latinx communities in school districts with higher percentages of emerging bilingual students such as Allentown (15.5% English learners) and Philadelphia (12.8% English learners) have been disproportionately impacted by COVID-19. For example, neighborhoods in Allentown with higher percentages of Black and Latinx residents report higher rates of infection and death for these populations.⁶ Philadelphia also reports that Latinx populations are hospitalized at higher rates than white residents.⁷
6. The Centers for Disease Control and Prevention advises that among the factors that increase community spread and individual risk are close physical contact, enclosed space and duration of exposure. They define close contact as being within 6 feet of an infected

² Centers for Disease Control and Prevention, “COVID-19 Hospitalization and Death by Race/Ethnicity,” available at <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html> (Last updated Nov. 30, 2020).

³ Lindsay Kim, et al., “Hospitalization Rates and Characteristics of Children Aged <18 Years Hospitalized with Laboratory-Confirmed COVID-19-NET, 14 States, March 1-July 25, 2020,” MMWR Morbidity and Mortality Weekly Report (August 14, 2020) <https://www.cdc.gov/mmwr/volumes/69/wr/mm6932e3.htm>.

⁴ See COVID-19 Vaccine Fact Sheet for Individuals in Phase 1, December 20, 2020 available at <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Guidance/Vaccine-Fact-Sheet-Phase-1.aspx>.

⁵ Figueroa, Jose, et. al., “Community-Level Factors Associated With Racial And Ethnic Disparities In COVID-19 Rates In Massachusetts,” Health Affairs Vol. 39, No. 11 (August 27, 2020) available at https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.01040?utm_campaign=CovidFasttrack&utm_medium=press&utm_content=FIgueroa&utm_source=mediaadvisory.

⁶ Woods, Christopher, “Racial and Ethnic Disparities in Allentown’s COVID-19 Cases” Georgetown Public Policy Review (June 13, 2020) available at <http://gppreview.com/2020/06/15/allentown-covid-19/>.

⁷ See e.g., Nine months into the pandemic, Philly’s Black residents still suffer the most: ‘It’s very hard to understand.’ Philadelphia Inquirer, November 27, 2020.

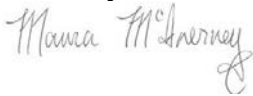
person for a cumulative total of 15 minutes over a 24-hour period starting from 2 days before illness onset or for 2 days prior to test specimen collection for asymptomatic persons. Many emerging bilingual students reside in dense urban communities and in multi-family residences in close contact with neighbors and family members who already have higher risk of exposure due to the factors stated above.

7. At the current time, the Department's website advises that current ACCESS testing dates remain in full force and effect although we understand that the testing window has been extended by one month to March 21, 2021. The website also provides directions to school and district staff for the administration of the ACCESS and related activities and informs parents of the importance of participating in ACCESS testing. *See English Language Proficiency Assessment* webpage at <https://www.education.pa.gov/Teachers%20-%20Administrators/Curriculum/English%20As%20A%20Second%20Language/Pages/Assessment.aspx>.
8. There is no information on this page regarding the impact of the COVID-19 crisis, potential postponement of testing dates, or whether parents of students with legitimate concerns surrounding COVID-19 infection, illness, and death can choose to opt out of or postpone participation in testing. We understand that there may be internal memos and guidance to educators and administrators regarding the process of administering ACCESS testing and documenting absences. We ask that this information be shared by the Department with students and families and that they be apprised of their option to decline to participate in in-person testing.
9. The Department's current information fails to acknowledge an awareness of the deadly surge confirmed by public health experts and authorities that is currently unfolding nor does it delineate any information on safety precautions to protect teachers, students, or families.
10. In addition, the COVID-19 Guidance and Answers to Common Questions also fails to address in any way whether ACCESS testing will be postponed or how ACCESS testing will be administered safely. *See COVID-19 FAQ* webpage at <https://www.education.pa.gov/Schools/safeschools/emergencyplanning/COVID-19/20-21FAQs/Pages/default.aspx>.
11. Under the current circumstances, we contend that these tests are not required to be administered at this time. As you know, these tests are not used to inform instruction this year (as these tests are administered in January and February and results are not available to teachers until May or June, as instructional calendars come to an end). Accordingly, there is no valid educational purpose for these assessments to be undertaken under the current circumstances.
12. We also recognize that this current school year has been unique for each student due to COVID-19 related disruptions in schools and communities. These diverse and challenging circumstances are incomparable to previous administrations of the ACCESS assessments. In light of the challenges posed by the ACCESS metric, we encourage the Department to consider issuing robust guidance supporting additional local data collection efforts to inform effective language instruction under these circumstances. We further urge the Department to issue additional guidance concerning language instruction modalities and how to measure English language proficiency progress during the current

school year. This guidance is critical to ensuring that the language instruction needs and educational goals of emerging bilingual students are met.

In light of the foregoing facts and likelihood of a disparate impact and imminent harm that will disproportionately impact students of color and immigrant students, we believe that reliance on in-person testing for emerging bilingual students raises serious discrimination concerns. We urge the Department to acknowledge that school district administration of in-person ACCESS tests to English learner students, among the highest risk populations and most vulnerable communities, is too risky and may be potentially life-threatening. ***In response to this threat, WIDA ACCESS assessments must be postponed until it is safe to administer in-person testing and it must be communicated to families that participation in testing is completely voluntary.*** This approach is more than reasonable and falls in line with PDE's mission of supporting the success of multilingual learners. We stand committed to ensuring that English learners have access to full educational opportunity without placing themselves and their families in imminent harm, and we trust that PDE shares this goal and will do all it can to ensure such is accomplished. Thank you for your consideration of this request.

Sincerely,



Maura McInerney, Legal Director
Education Law Center-PA
1800 JFK Blvd., Suite 1900-A
Philadelphia, PA 19103

Jennifer Clarke, Executive Director
Public Interest Law Center

Cathryn Miller-Wilson, Executive Director
HIAS Pennsylvania

Cheri Micheau, Ph.D.,
Alliance for Philadelphia Public Schools

Luz Hernandez, Executive Director
Philadelphia HUNE, Inc.

Cathi Tilman, Executive Director
La Puerta Abierta, Inc.
Philadelphia, PA

Jacqueline Perlow, Esq., Staff Attorney
Community Justice Project
Pittsburgh, PA

Anna Perng, Co-Founder
Chinatown Disability Advocacy Project