

STATE OF COLORADO

Colorado General Assembly

Kirk Mlinek, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
Facsimile (303) 866-3855
TDD (303) 866-3472
E-Mail: lcs.ga@state.co.us



Charles W. Pike, Director
Office of Legislative Legal Services

Office Of Legislative Legal Services
091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045
Facsimile (303) 866-4157
E-Mail: olls.ga@state.co.us

MEMORANDUM

March 28, 2006

TO: Bill Garcia and Maria Rocha-Secrest

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2005-2006 #95, concerning Education of English-Language Learners

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment to the Colorado constitution appear to be:

1. To make findings concerning the English language, the education of immigrant children, and the education of children in English;
2. To define terms for purposes of the proposed measure including "bilingual

education", "English language classroom", "English language mainstream classroom", "English learner", and "accelerated English acquisition";

3. To require school districts annually to determine the number of students enrolled in each school in the district and the total number of students enrolled in the district who are unable to perform ordinary classroom work in English, to classify such students by grade, primary speaking language, and type of English language acquisition program, and to publish the information on the school district web site;

4. To allow the state board of education to prescribe regulations for the collection of information on students who are unable to perform ordinary classroom work in English;

5. Unless given a waiver, to require all students in public schools in Colorado to be placed in classrooms in which English is the overwhelming language of instruction;

6. To allow school districts to permit students who are unable to perform ordinary classroom work in English to be educated through accelerated English acquisition for a period not intended to exceed one year, to allow school districts to place students of different ages but similar English proficiency in the same classroom, to encourage school districts to place students of different primary speaking languages but similar English proficiency in the same classroom, and to direct school districts to move students who were unable to perform ordinary classroom work in English to ordinary classrooms once they acquire a good working knowledge of English;

7. To specify that the proposed measure shall not affect foreign language classes for students who are proficient in English or special educational programs for physically or mentally impaired students;

8. To allow the parent or legal guardian of a student who possesses adequate English skills, a student who is ten years of age or older, or a student with special needs to request a written waiver of the requirement that a student be taught in a classroom in which English is the overwhelming language of instruction;

9. To require, prior to requesting the waiver, that the parent or legal guardian personally visit the school and receive a full description, in a language the parent or guardian can understand, of the materials that would be used in different educational programs and all of the educational opportunities available to the student;

10. To allow a school district, pursuant to guidelines established by the state board of education considering the best interests of the child, to grant or deny the requested waiver;

11. To require a school in which twenty or more students of the same grade level have received waivers to offer a different type of program such as a bilingual program and to allow a student who receives a waiver to be transferred to classes teaching English and other subjects through bilingual education techniques or other generally recognized educational methodologies;

12. To allow a student enrolled in a school with fewer than twenty students of the same grade level who have received a waiver to transfer to a school that offers a different type of program of instruction;

13. To require all school children to be provided with an English language public education;

14. To direct the state board of education to enforce the provisions of the proposed measure, to place on accreditation watch school any district that fails to implement or fails to effectively implement the provisions of the proposed measure, and, if a school district fails to show significant improvement following placement on accreditation watch, to withdraw accreditation from the school district;

15. To authorize the state board of education to establish implementation standards to meet the intent of the proposed measure;

16. To require all public school children, except those classified as severely learning disabled, who are not currently able to perform ordinary classroom work in English in grades two and higher to take a standardized, nationally accepted written test of academic subject matter in English each year;

17. To require all public school children, except those classified as severely learning disabled, who are not currently able to perform ordinary classroom work in English in grades kindergarten and higher to take a nationally accepted test of English proficiency each year;

18. To direct the state board of education to select the tests required to be administered pursuant to the proposed measure and to require the use of the same tests for a period of five years unless substantial evidence shows that the tests are ineffective in assessing English skill level;

19. To require that national percentile scores of students shall be confidentially given to individual parents and that aggregated percentile scores and distributional data for

individual schools and school districts shall be made publicly available on the school district web site or on another web site selected by the state board of education;

20. To require the web sites to contain the scores for students who are not currently able to perform ordinary classroom work in English and to require that the scores be separately subaggregated with further subaggregation based upon the types of educational programs in which the students are enrolled;

21. To require the web sites to contain school enrollment by race, ethnicity, and type of educational program and to be publicly available;

22. To authorize the use of tests scores for additional purposes;

23. To provide that the provisions of the proposed measure are severable;

24. To provide that the governing intent of the proposed measure is contained in section 1 of the proposed measure;

25. To establish that the testing requirements shall be effective upon passage of the proposed measure and that the remainder of the measure shall be effective July 1, 2007.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

Technical questions:

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by initiative:

"Be it Enacted by the People of the State of Colorado:"

To comply with Colorado's constitutional requirement, the proponents should include the enacting clause above in its entirety at the beginning of the proposed initiative. Would the proponents consider including the phrase above at the beginning of the proposed initiative?

2. Generally, measures contain an amending clause indicating where in the constitution

the proposed measure would go such as:

"SECTION 1. Article IX of the Colorado Constitution is amended BY THE ADDITION OF A NEW SECTION to read:"

Would the proponents consider adding an amending clause to the measure?

3. Do the proponents intend to add one new section to the constitution with ten subsections or do they want to add eight new sections to the constitution or some other number of sections to the constitution?
4. The last provision is referred to as "PARAGRAPH 4". Is it the proponents' intent that this be a subsection of the new constitutional section or a section of the measure that would be law but would not appear in the constitution?
5. Under standard drafting practice, any new language to be added to the constitution to appears as "SMALL CAPS" (i.e., in upper case format). Would the proponents consider using upper case format for new language they intend to appear in the constitution?
6.
 - a. Section 1 of the proposed measure appears to be a statement of the intent of the people in enacting the measure. Do the proponents intend section 1 to appear in the constitution? If so, would the proponents use upper case format for this language?
 - b. If the proponents do not wish to have the language in Section 1 appear in the constitution, it would require a separate amending clause such as:

"SECTION 1. Findings and declaration. (1) The people find that the English language ..."
 - c. If the proponents intend to leave section 1 as a subsection of the new section in the constitution, would the proponents consider adding a title to the section1, similar to the titles that appear for the other sections of the measure?
7. The initial phrase in section 1 does not appear to be structured as an introductory portion to the subsections (a) through (f) that follow. Is the introductory phrase that is intended to apply to each of those subsections "The people find that"? If so, should the phrase in the first line of section 1, "[T]he English language is the common public

language ...", be the subsection (a)?

8. Although subsections (b) through (f) appear to be complete sentences, subsection (a) does not appear to be a complete sentence. Do the proponents intend subsection (a) to be a complete sentence?
9. Subsections (a) through (e) of section (1) appear to be a statements of why the measure is needed. Subsection (f) appears to be a statement of what the measure does. Would the proponents like to put subsection (f) in its own section?
10. Generally, definitions are placed in alphabetical order. Would the proponents consider moving "Accelerated English acquisition" to the first paragraph of section 2?
11. Section 4 and paragraph 4 refer to "this Amendment" and section 6 refers to "the Constitutional Amendment". If this measure is adopted, it will appear in the Constitution as a new section and will not be an "amendment". Would the proponents consider changing these references to "this section"?
12. Section 4 and section 5 of the measure refer to "Section 5" and "Section 4" respectfully. If the measure is adopted, it will become a new section, and these references will be to subsections rather than sections. Would the proponents consider changing these references to "subsections"?
13. Similarly, section 6 refers to "Paragraph 4 of this chapter". Would the proponents consider changing this reference to "subsection 4 of this section"?
14. The next to last section of the measure is titled "Section 3." If the proponents intend that the language appear in the constitution, would the proponents consider renumbering it "Section 9"?

Substantive questions:

1. In reference to paragraph (c) of section 1 of the proposed measure, what do the proponents intend by the sentence "The government and the public schools of the state of Colorado have a moral obligation and a constitutional duty to provide all of Colorado's school children ... with the skills necessary to become productive members of our society"? Do the proponents intend for this constitutional duty to be different or in addition to the current state constitutional requirement, under section 2 of article IX of the state Constitution, that the General Assembly establish and maintain a

thorough and uniform system of free public schools? Is it the intent of the proponents to establish a new constitutional duty "to provide all ... children ... with the skills necessary to become productive members of our society"?

2. In regard to the definition of "English language classroom" in section 2 (b), do the proponents intend to establish a standard for teaching personnel to ensure that they are "fluent and literate in English"? How would that standard be established?
3. In regard to the definition of "English language mainstream classroom", how do the proponents define "reasonable fluency" in English? What is that standard? Who would establish this standard?
4. In regard to the definition of "English learner" what is the standard for being "able to perform ordinary classroom work in English"? Who would establish this standard?
5. Under the census provision in section 3, do the proponents intend to require new rule-making by the State Board of Education? If the proponents intend for the effective date of section 3 to be July 1, 2007, do the proponents intend for the first census by school districts to take place no later than April 1, 2008?
6. Section 3 refers to "regulations prescribed by the State Board of Education". Currently, the "Colorado Administrative Procedures Act", article 4 of title 24, C.R.S., refers to "rules" rather than regulations. Would the proponents consider changing references from "regulations" to "rules"?
7. If a school district does not maintain a web site, would section 3 of this measure require the school district to create a web site for purposes of making information on the English learners within the school or school district available?
8. If a school district cannot ascertain the number of English learners within the system until April 1, the greater part of the school year will be past before the school district knows how many English learners are enrolled in the district. With the high rate of mobility within the public school system, a census in the Spring will probably not be accurate the following Fall. How do the proponents anticipate that a school district will use the census information? Is the timing of the census appropriate for that use?
9. In regard to section 4, what is the standard for determining when English learners have acquired "a good working knowledge of English and are able to do regular school work in English"? Who establishes this standard?

10. Under section 4, what do the proponents intend by the language "during a temporary transition period not normally intended to exceed one school year"? Do school districts retain the authority to determine whether the transition period for an individual student may exceed one year?
11. In regard to section 5:
 - a. Why would a student who already possesses adequate English skills be eligible for a waiver?
 - b. What is the standard for determining whether a student is a student "with special needs"? Who establishes this standard?
 - c. Section 5 authorizes parental waivers and allows school district officials to decide whether to grant or deny the request for the waiver based on guidelines established by the State Board of Education. Do the proponents intend for "guidelines" to have the same meaning as "rules" promulgated by the State Board of Education pursuant to the "Colorado Administrative Procedures Act", article 4 of title 24, C.R.S.?
 - d. What do the proponents mean by "generally recognized educational methodologies permitted by law"?
 - e. If a student receives a waiver and is entitled to transfer to another school, is the school district required to provide transportation for the student to attend another school?
12. Section 6 empowers the State Board of Education to establish "implementation standards". Is it the proponents' intent to authorize the State Board to promulgate rules to implement the new section? How will the State Board measure whether a school district "effectively" implements accelerated English acquisition?
13. Section 6 refers to students receiving English language public education at "their assigned school". Under Colorado law, a parent may enroll his or her child at any public school in the state, so long as there is room and the child is enrolled as of October 1. Is it the intent of the proponents to require English language learners to attend their neighborhood school?
14. Is it the proponents' intent that the General Assembly also retain authority to enact implementing legislation with regard to the measure?
15. Section 7 refers to children in "grades Kindergarten and higher". By this do the proponents intend to refer to kindergarten and grades one through twelve?
16. Section 7 refers to "nationally accepted" test. What does this phrase mean? Is there

a specific national organization that would have to recognize the tests?

17. In regard to the administration of a nationally accepted test of English proficiency selected by the State Board of Education, is it the proponents' intent to establish a testing requirement that is in addition to the assessment currently required under the "English Language Proficiency Act", sections 22-24-105 and 22-24-106, C.R.S.?
18. Section 7 also refers to a written test of "academic subject matter". Which academic subjects should the test address? Would the same subjects be tested in all grades?
19. Is it the proponents intent that the tests required by section 7 would be in addition to the tests administered pursuant to the Colorado Student Assessment Program ("CSAP") pursuant to section 22-7-409, C.R.S.?
20. What does the term "distributional data" mean?
21. If a school district or a school has a low enough number of English language learners that the scores could not be subaggregated without revealing the identity of the student, could the State Board waive the reporting requirements of section 7?