



October 22, 2015

State Board of Education, Chair Summer and Members  
255 Capitol St NE  
Salem, OR 97310-1300

Thank you for considering the observations of Oregon Education Association, on behalf of its 43,000 members – particularly its professional ELL educators. We have participated in work groups on the topic of ELL instruction for more than 15 months, endeavoring to produce a set of policy objectives that truly help students succeed. Our own 2015 legislation, HB 3423, was incorporated into the final bill, HB 3499, which gave rise to the proposed set of ELL rule drafts being first-read today.

With this backdrop of our participation, we hope that you take seriously the concerns we are presenting to the Board regarding the proposed language in the draft rules regarding ELL district improvements. We believe that the draft reflects the perspectives of just one side of the coalition table and omits significant input from the professional educator side, to the detriment of public schools and the ELL students they serve.

Before itemizing the specific policy and language provisions of concern, we would like to remind the Board of how we got here today, and what the original goal and intent of HB 3499 is. Furthermore, we believe that an honest conversation about metrics that accurately measure what we value are in short supply, but that fact should not lead to the typical reaction – which is to use what we have, irrespective of flaws.

#### HISTORY OF THE ELL BILL

Beginning in the summer of 2014, then-Deputy Superintendent Rob Saxton collaborated with private interest groups to produce a legislative proposal to alter the K-12 distribution formula, and to convert it into a spending mandate with a hard cutoff of all ELL funds after six years. Understandably, education experts expressed grave concerns over the underlying assumptions, voiced in testimony and publications, that school districts were squandering resources, performing poorly, and required threats and funding withdrawal punishments to improve exit rates and other “outcomes”. We also decried the precedent of turning a distribution formula into a spending mandate, thereby utterly undermining local community priorities and breaking faith with the purpose of the equity formula itself (to account for uncontrollable district cost factors in spreading whatever limited resources a given legislature allocates for any given biennium). We met for many months with ODE staff and others to struggle through a facilitated process of trying to find compromises that all sides could accept. Given that we had much disagreement about what the underlying problem was, this was a difficult task.

Some of the educator groups, including OEA, formed a work group one year ago to unearth what was really occurring “on the ground” in Oregon’s 197 school districts. We worked with community-based organizations, immigrant parents, legislators, bilingual educators, and ELD specialists to determine how best to support English-language learners, who are not monolithic and whose various needs demand different and tailored solutions. What emerged from this work was HB 3423.

HB 3423 defined ELL in Oregon statutes; created an educator-led task force to broaden the list of educationally sound exit exams (now, only the ELPA is allowed); charged the task force with promulgating more meaningful accommodations for students who need them; focused on early identification and family support; created a fund for purchase of library

books in languages other than English; and encouraged schools to establish drop-in homework help centers for ELL students. In the 2015 Legislature, the existence of competing legislative proposals led Rep. Joe Gallegos to convene yet another work group, on which OEA participated, to craft a compromise policy solution, which was passed into law as HB 3499. Because we were key voices at the table of that work, we believe that we understand the meaning and the intent of the bill and are well-placed to point out that some advocates are pushing for policy elements that were negotiated away in the coalition compromise. We see that not only as bad faith as a process issue, but also, in the case of several suggestions, irresponsible policy that could inadvertently harm students.

In any case, we would urge the Board to direct Dept. of Education staff to rewrite the rule in a way that more faithfully reflects both the language and intent of the bill and that captures all voices at the ELL work group table. Just a few participants nominated for the work group were actual classroom teachers, and their views are absent from this draft. The voices of these practitioners (and more of their colleagues) would improve the rule for selecting districts and schools.

### HB 3499 ITSELF

While HB 3423 took an individual student approach to intervening in districts where ELL students seem to have taken longer than expected to achieve English proficiency (see attached research), HB 3499 originally took more of an institutional approach to the same task. We saw the two bills as compatible and supported merging the best concepts of each into a single piece of legislation.

HB 3499 as enrolled identifies a targeted list of 30-35 schools whose ELL students seem to have the greatest barriers to successfully completing their language-proficiency goals. The bill requires reporting on the students' status and charges ODE with provision of technical support and up to \$60,000 in additional resources for approximately three years, to target interventions in a way similar to the approach used for priority and focus schools. After the completion of this support phase, ODE was charged with managing the deployment of the extra half-weight in any school district whose students may still be struggling, despite interventions.

In our collaboration on the final language, we made the point that the terms "low-performing" and "outcomes" were loaded descriptors. We asked that the final bill language reflect a broader concept – "student progress indicators" and we asked that the work group develop criteria and metrics for assessing whether a school district's ELL programs were meeting the needs of students in an optimally timely and effective fashion, taking into account the specific learning challenges and demographics of the students enrolled. We also noted that "outcomes" reflect the "result" of an educational process, not the markers of ongoing educational experience, and so we asked that language in the bill manifest this distinction. Finally, we asked for the data to be adjusted for the factors that influence student learning, such as dual identification, actual time of students in the program (given that some move in and out of school each year), the length of time in ELL programs, the length of time in a student's current school (to capture the learning loss of frequent moves), and other factors that would give us a richer picture of what is going on with individual learners.

Given that we agreed as a coalition that the work group would "establish indicators" to guide the ODE's selection of districts, we see the proposed rule, which does not base its proposed process on "the recommendations of the work group" but only of a subset of participants, as contrary to the compromise agreement that resulted in HB 3499 (attached).

You will note that throughout the bill, the terms "***not meeting objectives and the needs of students...taking into account the specific learning challenges and demographics of the students***" is the language we finally landed on to describe how the ODE would scrutinize ELL programs for the purposes of technical assistance and money. Not "outcomes" and "low-performing" and "under-served" or any of the other loaded, politicized verbiage used both in the draft rule and in the comments of school critics. We thought that we had successfully changed the tone of the narratives emanating from those voices. As proof, we offer to the Board this joint press statement, crafted on the eve of HB 3499's passage, that reflects our common understanding:

*“Today the House Education Committee passed historic legislation to address the needs of Oregon’s 57,000 English Language Learners (ELLs). House Bill 3499 increases the urgency, focus and support for ELL students in Oregon’s 197 public schools districts. This legislation comes at a critical time as ELL students have grown 120 percent in the last decade. Though many of our K-12 schools offer high-quality English language development programs, challenges remain. It is our belief that this legislation will help school districts give all our kids a brighter academic future.*

*A diverse set of stakeholders, including the Oregon Alliance for Education Equity, Oregon Education Association and many others, have joined together in support of HB 3499. HB 3499 heads to the House floor with bipartisan support.”*

WORK GROUP PROCESS TO DATE

Two meetings of the newly convened work group featured various ODE staff presentations and was strongly guided by pre-formed language to respond to. The meetings were led by a paid facilitator. In no way could these meetings be said to have evolved an organic, group-created set of understandings that could be construed as following the mandate of HB 3499, which directed the work group to:

“SECTION 3. (3)...**identify** the following:

- (a) **Criteria for determining if a school district is:**
  - (A) **Not meeting objectives and the needs of students** eligible for and enrolled in an English language learner program, taking into account the specific learning challenges and demographics of the students; or
  - (B) **In need of targeted assistance.”**

What occurred instead was two long days of examining and arguing about the validity of the data already possessed and tracked by the Department as reported by districts, and whether it gave an accurate picture by which to measure student success and district program quality. No consensus was found in the 12-plus hours of staff-led data presentations and language proposals. This leads us to our greatest area of concern about the process and the rule, which is, after all, only a piece of the work on the ELL Work Group’s plate – to determine which districts most deserve the extra financial and technical support.

Various ways to measure program, school, and district “quality” were proposed, based on what is currently collected. Here is a summary of the elements and their weaknesses:

<b>Measurement Data</b>	<b>Issues with Validity</b>
ELPA test performance and/or growth over time	ELPA test is changing to ELPA 21 so growth cannot be used, comparing two different tests; also, ELPA 21 results will not be available in time. Also, we have heard from our educators that other means of assessing ELL students may be better for accurately measuring learning gains for some students.
SBAC test performance and/or growth over time	SBAC measures English language arts proficiency and math content (tested in English), which is a poor measure of ELL program strength, given that by definition, the students are not English proficient and math content skill is irrelevant to the enterprise of detecting ELL program strength.
Attendance of students	Not the purview and authority of schools, much less their ELL programs – really a measure of student volition and parent engagement. Does not measure ELL program strength.
Graduation rates of ELL students	Some called this a “post-mortem” on ELL kids; others say it is based more on SBAC test performance with its inherent flaws concerning the enterprise of measuring ELL program strength.
Length of time in ELL program	This is getting closer, especially if the time students actually spend in the ELL program (some come and go) as well as issues of poverty, capacity, interrupted formal education, and dual identification are considered, and if the cut line corresponds to research on this – e.g., nothing shorter than seven years for demonstrated academic (as opposed to conversational) fluency in English. Data reflecting the reasons for longer than average retention need to be explored. See attached research.

Sociologist William Bruce Cameron once noted, *“Not everything that counts can be counted, and not everything that can be counted counts.”*

Until we resolve the issue of appropriate metrics for evaluating districts and schools, this rule is not ready for adoption. This is because the tone of the draft rule, following the lead of education critics, is negative and stigmatizing, using language that seems punitive and controlling. However well-intentioned the approach, the results will not achieve the desired ends of improving the educational experience of our ELL students. No one led kicking and screaming with a “Scarlet A” sewn to her bodice to a punitive, unspecified “intervention” is likely to be transformed into a successful performer. That is why OEA proposes a better approach to the application of HB 3499 resources.

#### A BETTER APPROACH TO TECHNICAL SUPPORT

OEA proposed to ODE staff, to the ELL Work Group, and to HB 3499’s sponsor, Rep. Joe Gallegos, a different approach; one that would eliminate the stigmatization and resulting high stakes and test-obsession from the district identification challenge. We proposed distribution of the HB 3499 funds in a voluntary grant process. Districts eligible to apply for the financial and technical resources would be those districts whose student progress indicators and student demographics indicate that they would most benefit from the extra supports, and districts that fall outside those indicators would not be eligible to apply. By making participation in the program voluntary, the intended results of the assistance are guaranteed to be better spent and more successful, because they involve the voluntary cooperation, participation, and enthusiasm of the schools and districts who step forward. If voluntary granting is paired with more careful wording (rather than that the stigmatizing labels implying district failure), we believe that this program’s ends will be more likely achieved. Rep. Gallegos agreed with us when we proposed it to him; in fact, he said that he’d had the same thought.

Our belief is that the best approach would be to begin with the student characteristics and then work down. Array the school districts first by property wealth per student, to get a sense of the community’s economic circumstances (this is already done for the local-option matching grants). Then, focus on the lowest per-student property wealth, selecting the districts with the highest student poverty. Then, remove those districts already participating in other assistance programs (such as priority and focus schools). Do not impose factors such as school district size or geographic locale, because these factors have nothing to do with ELL program strength and are not mandated by the bill. We believe that the remaining districts could be scrutinized further by ELL student percentages and average length of time in ELL programs, looking at ***all students*** who have taken these classes (the so-called “Ever ELL” students). This last element is crucial for mathematical accuracy; if the districts are judged only by those who are retained, and not by those who exit, ELL, we are taking a distorted look at their programs, because we eliminate their successful students (those who’ve exited) from the equation. Only by leading with the external factors that impact student learning can we accurately narrow our focus to program performance. And only by making the program voluntary can we ensure that ELL programs will overcome obstacles using best educational practices. The argument against this proposal reflected a tone of punitive “accountability” – counterproductive punishment of the adults who are trying to help students be academically successful.

#### ONE FINAL NOTE

It has been proposed by some that new data collections and disaggregation be required by rule. It has also been advocated that the rule insert the requirement of “community oversight” groups for districts receiving support. Neither of these elements are found in the legislation, and we would oppose these ideas for several reasons: one, district burden and two, education experts – from the ODE staff on down to the classroom teacher – ought to be able to collaborate effectively in the use of grants and technical assistance without non-experts’ “help”. We do support the participation of ELL parents and teachers, working together, to develop and sustain high-quality ELL programs, and we encourage that local activity wherever possible, though not by mandating it in this rule.