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November 16, 2009

Mr. Lawrence Feinberg
National Assessment Governing Board
800 North Capitol Street, Suite 825
Washington, D.C. 20002

RE: The National Assessment Governing Board (NAGB) request for comment on expert panel recommendations on uniform national rules for testing of students with disabilities (SD) and English language learners (ELL) on the National Assessment of Educational Progress (NAEP)

Dear Mr. Feinberg:

The Mexican American Legal Defense and Educational Fund (MALDEF), the nation's leading Latino legal civil rights organization, respectfully submits our comments on the expert panel recommendations on uniform national rules for testing SD and ELL students on NAEP.

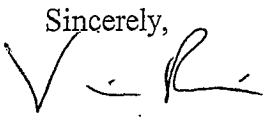
We would like to commend NAGB for taking a leadership position in convening an expert advisory panel to recommend uniform national rules for testing ELL students to reduce the wide variation among states in the rates of ELL students participating in NAEP in order to obtain good information based on a full representative sample of ELL students that assists local districts and policy makers in improving services to them. We request that further clarification be made to some of the recommendations, specifically those related to ELL students as provided below:

- Under the recommendation *that all English language learners who have been in United States schools for one year or more be included in the NAEP assessments*, we request that NAGB further clarify "one year" to mean a school year consisting of either a combination of fall, spring or summer sessions. Schools may vary in their interpretation on what constitutes a year and may exclude ELL students from being assessed if they interpret that one year needs to be twelve consecutive months. Some ELL students enroll in school and then may have to leave because of parents that are migrant workers or travel to their native countries thus interrupting attendance at a school for one year.

- Under the recommendation *that students who are ELL be offered ELL-responsive accommodations that are permitted by NAEP and selected at the local level by a qualified person who knows the student*, we request that NAGB further clarify "qualified person" by requiring that the person be certified in English as a Second Language, bilingual education or have the necessary training in educating English language learners. While it is good that the recommendation is for NAEP to provide explicit guidance about the knowledge and skills this local professional will need to make decisions, requiring that the "qualified person" be certified in English as a Second Language, bilingual education or have the necessary training in educating English language learners will ensure that the proper professional is selected to make these important decisions at the local level.

Thank you for the opportunity to provide you comments, please contact us if you need additional information.

Sincerely,



Veronica Rivera
Legislative Staff Attorney