Testimony of
Albert Shanker, President
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to the
U.S. Department of Education
on Proposed Rules on
"Nondiscrimination Under Programs Receiving
Federal Financial Assistance Through the Education Department"
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I am pleased to appear today to present testimony on behalf of the 568,000 members of the American Federation of Teachers. Our members include elementary and secondary teachers across the nation who are currently teaching children of limited English proficiency and dealing with the very issues the proposed rules address.

The proposed rules attempt to eliminate serious barriers to equal educational opportunity by setting standards for teaching students whose primary language is not English and who have limited English proficiency. The Department of Education estimates that there are currently 3½ million school-age children whose primary language is not English and who might not be receiving equal educational opportunity because of this language barrier.

This is a serious problem and one about which the American Federation of Teachers is deeply concerned. We have been long cognizant of this problem and for almost two decades have supported transitional bilingual education programs to assist children to function in English as soon as possible so that they might be able to take full advantage of their educational opportunities. The AFT applauded the decision of the U.S. Supreme Court in Lau v. Nichols, 414 U.S. 563 (1974), which pointed out that students who cannot benefit from English instruction are discriminated against if no special educational services are provided. The Court correctly required remedial action, but did not specify the nature of the remedy. The

present proposed rules, which base their authority on the Lau decision, raise some serious and fundamental concerns.

The federal government proposes to mandate on local school districts a single program of instruction, namely bilingual education, for students of limited English proficiency. The Lau decision suggested a variety of approaches to educating such children and did not require our specific remedy. A survey of educational research in this area shows that there is no evidence that any given method of teaching students of limited English proficiency is better than another method. While the proposed regulations mandate that bilingual education is the acceptable program, many schools have achieved greater success with other approaches. Just as the U.S. Department of Education does not and should not mandate one and only one method of teaching reading or math or science, it should not mandate one method of teaching students who are of limited proficiency in English. Nonetheless, that is exactly what the Department of Education is trying to do.

This is wrong on education grounds because the program being mandated has never been proven to be superior to alternative programs designed to meet the same needs.

It is wrong on administrative grounds because the Department of Education was not created by Congress to specify particular instructional programs on local school districts and the legislation setting up the Department forbids this.

It is wrong on legal grounds because the U.S. Supreme Court in Lau pointedly did not specify a single remedy or program, but clearly stated that a multiplicity of approaches might be appropriate.

It is wrong on constitutional grounds because education is a state and local matter and one in which the federal government should not intrude without a clear legal mandate.

It is wrong on human rights grounds because prolonged dependence on the primary language and delayed transition to English instruction only handicaps the child in gaining the skills necessary to succeed in American society.

Under the guise of preventing discrimination the Department of Education is violating the law and fostering further segregation and discrimination. This is vigorously opposed by the AFT.

A number of the specific program components and mandates are faulty and must be opposed.

The assessment criteria for program eligibility are overly broad and educationally faulty. Under the proposed regulations, children who come from non-English homes or backgrounds will be instructed in English if their English is judged to be superior to their native language. Those whose native language is superior and whose English is assessed on a test of oral proficiency or reading comprehensive to be at a level equal or below that of <u>40 percent of all students</u> on state or national norms must be taught in both languages. This means that unless the students' English ability is almost at the average for all students, he or she must be instructed in both languages. Since experience has shown that most students' English ability will probably not exceed the 40th percentile, most students who are from non-English backgrounds will be placed in bilingual education programs whether the student can best benefit from that program or not.

Also, precise language proficiency, or language superiority cannot be measured as easily as the proposed regulations imply. In such language proficiency tests there are wide margins for error which could lead to the mislabeling of hundreds of thousands of children.

Also, research has shown that there are a large number of children of limited English proficiency who are English superior with the primary language weaker than English. Given the crude state of language assessment measures, such students could be placed in a program where they are condemned to failure.

The proposed regulations mandate the use of qualified bilingual education teachers, who are not available in anywhere near the numbers needed for the program. If school districts do not have qualified bilingual teachers, they will be required to retrain existing staff over a five year period at their own expense. While retraining programs are a step in the right direction, they will saddle already financially overburdened school districts with gargantuan additional expenses, with no federal provision for assistance. As Department of Education officials themselves admit, very limited amounts of funds are already available under ESEA, Title VII, but that the bulk of the retraining costs will have to come out of the pockets of local school districts.

Setting of specific certification standards for bilingual education teachers is another unwarranted and illegal intrusion into the authority of the state in education. Setting standards for teacher qualifications in a state matter and not one which should be

grabbed by the Department of Education in a capricious manner.

By allowing uncertified personnel to teach, again in contravention of state requirements, the Department of Education is already violating its own goal of equal educational opportunity. If qualified bilingual education teachers are not available, the federal government is proposing to allow "other bilingual individuals" to teach until qualified teachers are available. It would be more educationally sound to require instruction by a certified teacher who is not bilingual than to allow anyone, whose only qualification is to be bilingual, to teach children of limited English ability. Children with such special needs require even more the services of fully qualified and certified teachers. The Department of Education is subverting the goal of equal educational opportunity and mandating sub-standard education for children of limited English proficiency.

The duration of the five year retraining period for existing teachers has no basis in practice and research. Unless the Department of Education is requiring something from these teachers that we currently know nothing about, the five year period does not seem necessary for such an undertaking. It would make far better sense for the Department of Education to fully fund a one year retraining program for currently employed teachers.

A pandora's box of controversy is opened up by the proposed regulations by mandating that programs be operated "with respect for the culture and cultural heritage" of the students. Past controversies would indicate that some will take this to mean that Puerto Rican students can only be taught by Puerto Ricans, Mexican American

students by Mexican Americans, Cambodians by Cambodians, French Canadians by French Canadians, and so on. If the notion is accepted that children of one ethnic group can only be taught by teachers of the same ethnic group, then the idea of a free and open society will be lost and discrimination and segregation will be perpetuated.

However, if the proposed regulation is accepted at face value and such additional interpretations are not imposed on it, then it can stand as a positive and sensitive note and one which should be commended.

The proposed regulations only ensure that a student in a bilingual program will be assessed at the end of the first two years, and annually thereafter. Since the purpose of these proposed regulations seems to be to encourage English proficiency, proper program accountability would require either constant assessment, or at least more frequent assessment so that a student could be placed in a regular school program when able to benefit from that program. The regulations encourage the retention of students in bilingual education programs long after the need may have ceased to exist. There is no basis in research for this two year period. Again, the Department of Education is basing mandates on a foundation of quicksand.

The costs of bilingual programs to local school districts would be extremely high. It has been estimated that it would cost from $6 million to $9 million alone to identify all those children eligible for the program. Total additional cost estimates for implementation of these proposed regulations run from $190 million to $360 million. One Department of Education official stated that

these proposed regulations could easily "become another 94-142," in reference to the Education for all Handicapped Act which has mandated countless millions of dollars of costs on local school districts with little federal financial assistance. Under current economic conditions, these funds can only come from current educational programs at the expense of other children. Money will be spent on a variety of non-teaching services that could be better spent on direct instructional services to teach children English.

In addition, some of the cost estimates do not bear up under close examination and seem extremely understated.

This program has close parallels with the Education of All Handicapped Act. Tremendous additional financial burdens will be imposed on local school districts along with impossible mandates and little federal assistance. Additional excess paperwork and reporting burdens will be placed on local school officials. An ultimate effect will be the decline of public education and flight to private schools.

These proposed rules raise fundamental questions about the role of the Department of Education in state and local school matters and create strong concern about federal intrusion into areas where the federal government has no authority.

The AFT petition the Department of Education to stay within its legal authority and the Supreme Court's mandate in Lau v. Nichols in order to strengthen public education at the state and local levels. The AFT further asks the Department of Education to fundamentally redirect these proposed rules which, as they are currently written,

work against equal educational opportunity, seriously harm many of our nation's youth, and foster further racial and ethnic segregation.

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