



# Immigrant Students and School Enrollment

Presented by:

New Jersey Department of Education in collaboration  
with

LEGAL ONE at the  
Foundation for Educational Administration



# Presenters

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# Disclaimer

*This presentation is intended as a summary of law only, and is not meant as legal advice. Please consult your attorney to obtain legal advice.*





# Topics to be covered

- Constitutional and statutory protections for English Language Learners
- Residency and Domicile
- Homelessness
- Immunization Records
- Transfer of course credits and high school graduation



# *LAU V. NICHOLS*

414 U.S. 563 (1974)



**“ . . . there is no equality of treatment merely by providing [EL] students with the same facilities, textbooks, teachers and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.”**





## The Equal Educational Opportunities Act OF 1974

- Congress effectively codified the Supreme Court's holding in *Lau* with respect to states and public schools in Section 1703(f) of the EEOA, but did not make their duty to serve ELs contingent upon federal funding.
- Section 1703(f) requires state and local education agencies to take appropriate action to overcome language barriers that impede equal participation by students in the agencies' instructional programs.
- For a more detailed summary and list of recent cases click [here](#).





New Jersey  
DEPARTMENT OF EDUCATION

# Office of Civil Rights Update

**U.S. Department of Education**  
*Office for Civil Rights*





## January 2015 Guidance

- Joint Dear Colleague Letter  
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>
- The [Civil Rights Fact Sheet](#) is a summary of the longer “Dear Colleague” letter.



# OCR/DOJ Joint Guidance Background

*Released on January, 7 2015*

- Joint guidance found in “Dear Colleagues Letter” around ELLs and civil rights
- Enforced by the Department of Justice and Office of Civil Rights
- Based on various civil rights legislation and court rulings
- [Broadcast memo](#) sent to NJ districts on 2/24/2015



# Dear Colleagues Letter

- What does it address?
  - Identifying English learner students in a timely, valid and reliable manner;
  - Offering all English learner students an educationally sound language assistance program;
  - Providing qualified staff and sufficient resources for instructing English learner students;
  - Ensuring English learner students have equitable access to school programs and activities;
  - Avoiding unnecessary segregation of English learner students from other students;
  - Monitoring students' progress in learning English and doing grade-level class work;



# Dear Colleagues Letter

- Remediating any academic deficits English learner students incurred while in a language assistance program;
  - Moving students out of language assistance programs when they are proficient in English and monitor those students to ensure they were not prematurely removed;
  - Evaluating the effectiveness of English learner programs; and
  - Providing limited English proficient parents with information about school programs, services, and activities in a language they understand.
- 
- <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>



# Dear Colleague Letter

## *Points of Interest*

- ELLs cannot be excluded from services due to scheduling conflicts (p. 14)
- Students must receive appropriate/adequate quantities of bilingual materials in bilingual programs (p.16)
- SIFES must have
  - interaction with English-speaking peers during nonacademic instruction/lunch/recess;
  - the same access to laboratories; and
  - grade-level math (p.18)
- School-level assessments must include **L1 for students instructed in L1** (p.20)
- School districts are responsible for growth of ELLs whose parents opt-out, cannot recommend opt-out, and must document opt-out(p. 30)
- Program effectiveness measurement (p.39)
  - Rate of English proficiency
  - Meaningful participation in the standard educational program



# Dear Colleague Letter

## *Translations*

- LEP parents must be given access to information brought to the attention of non-LEP parents, including:
  - ELL programs
  - Special education information
  - IEP meetings
  - Grievance procedures
  - Notices of nondiscrimination
  - Student discipline policies and procedures
  - Registration/enrollment
  - Report cards
  - Requests for parent permission for activities
  - Parent-teacher conferences
  - Parent handbooks
  - Gifted and talented
  - Magnet and charter schools
  - Etc.



# NJ Administrative Code

- [N.J.A.C. 6A:15](#) provides overall regulatory framework for NJ Schools
- 6A:15-1.1 General requirements
- 6A:15-1.2 Definitions
- 6A:15-1.3 Identification of eligible English language learners
- 6A:15-1.4 Bilingual Programs for English language learners
- 6A:15-1.5 Waiver process provided by statute
- 6A:15-1.6 Approval procedures
- 6A:15-1.7 Supportive services
- 6A:15-1.8 Inservice Training



# NJ Administrative Code (cont'd)

- 6A:15-1.9 Certification
- 6A:15-1.10 Bilingual, English as a second language, and English language services program enrollment, assessment, exit and reentry
- 6A:15-1.11 Graduation requirements for English language learners
- 6A:15-1.12 Location
- 6A:15-1.13 Notification
- 6A:15-1.14 Joint programs
- 6A:15-1.15 Parental involvement
- 6A:15-1.16 State advisory committee on bilingual education



# NJ Administrative Code (cont'd)

- 6A:15-1.7 Supportive services
  - (a) Students enrolled in bilingual, ESL, and English language services programs shall have full access to educational services available to other students in the school district.
  - (b) To the extent that is administratively feasible, supportive services to ELLs, such as counseling, tutoring, and career guidance, should be provided by bilingual personnel who are familiar with and knowledgeable of the unique needs and background of the ELLs and their parents.



# NJ Administrative Code (cont'd)

- 6A:15-1.11 Graduation requirements for English language learners

All ELLs shall satisfy requirements for high school graduation according to N.J.A.C. 6A:8- 5.1(a).



# 2015 Findings in NJ Schools

Not in compliance in the areas of:

- Exiting and monitoring ELLs;
- Evaluation of ELL programs;
- Communication with LEP parents/guardians;
- Evaluations and placement of ELLs with disabilities;
- AP/IB/GATE course participation; and
- Teacher student ratio for ELLs as compared to non-ELLs.



# EL Toolkit

Published September 2015

- <http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/index.html>
- Toolkit to help teachers and schools fulfill civil rights obligations.
- To request the tool kit in an alternate format as a reasonable accommodation, i.e. Braille, large print, CD Rom or audio, please contact Melissa Escalante by phone, 202-401-1407 or via email at: [Melissa.Escalante@ed.gov](mailto:Melissa.Escalante@ed.gov).
- Phone # 1-800-872-5327
- TTY: 1-800-877-8339
- Email: [ed.language.assistance@ed.gov](mailto:ed.language.assistance@ed.gov)

## CHAPTER 6



### TOOLS AND RESOURCES FOR ADDRESSING ENGLISH LEARNERS WITH DISABILITIES

*This is the sixth chapter of the English Learner Tool Kit, which is intended to help state and local education agencies (SEAs and LEAs) meet their obligations to English Learners (ELs). This tool kit should be read in conjunction with the U.S. Department of Education Office for Civil Rights' (OCR) and the U.S. Department of Justice's (DOJ) Dear Colleague Letter on "English Learner Students and Limited English Proficient Parents," published in January 2015, which outlines SEAs' and LEAs' legal obligations to ELs under civil rights laws and other federal requirements. The Dear Colleague Letter can be found at <http://www2.ed.gov/about/offices/list/ocr/elresources.html>.*

### TOOLS AND RESOURCES FOR ADDRESSING ENGLISH LEARNERS WITH DISABILITIES

#### KEY POINTS

- LEAs must identify, locate, and evaluate ELs with disabilities in a timely manner.
- LEAs must consider the English language proficiency of ELs with disabilities in determining appropriate assessments and other evaluation materials.
- LEAs must provide and administer special education evaluations in the child's native language, unless it is clearly not feasible to do so, to ensure that a student's language needs can be distinguished from a student's disability related needs.
- LEAs must not identify or determine that EL students are students with disabilities because of their limited English language proficiency.
- LEAs must provide EL students with disabilities with both the language assistance and disability related services they are entitled to under federal law.



The *Individuals with Disabilities Education Act (IDEA)* and *Section 504 of the Rehabilitation Act of 1973 (Section 504)* address the rights of students with disabilities in school and other educational settings. If an EL is suspected of having one or more disabilities, the LEA must evaluate the EL promptly to determine if the EL has a disability or disabilities and whether the EL needs disability-related services (which are special education and related services under IDEA or regular or special education and

related aids and services under Section 504). Disability evaluations may not be delayed because of a student's limited English language proficiency (ELP) or the student's participation in a language instruction educational program (LIEP). Also, a student's ELP cannot be the basis for determining that a student\* has a disability.

It is important for educators to accurately determine whether ELs are eligible for disability-related services. Research shows that there is variability in how LEAs

\*IDEA refers to a "child" with a disability. In this document "student" is used to mean "child" under IDEA.

NOTE: Neither this tool kit nor the above-cited OCR/DOJ Dear Colleague Letter is intended to be a replacement for the careful study of Part B of the *Individuals with Disabilities Act (IDEA)* and *Section 504 of the Rehabilitation Act of 1973 (Section 504)*, which govern the education of students with disabilities. More information about IDEA and Section 504 can be found at: <http://idea.ed.gov> and <http://www.ed.gov/ocr/publications.html#Section504>, respectively.

You can access [Tools and Resources for Addressing English Learners with Disabilities](http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/index.html) at <http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/index.html>

TOOLS AND RESOURCES FOR ADDRESSING ENGLISH LEARNERS WITH DISABILITIES



# EL Toolkit

- **Introduction Translations:**
- [Chinese simplified](#) (PDF, 82KB)
- [Chinese traditional](#) (PDF, 136KB)
- [Spanish](#) (PDF, 65KB)
- [Lao](#) (PDF, 91KB)
- [Korean](#) (PDF, 140KB)
- [Hmong](#) (PDF, 60KB)
- [Khmer \(Cambodian\)](#) (PDF, 401KB)
- [Russian](#) (PDF 426KB)
- [Tagalog](#) (PDF, 274KB)
- [Vietnamese](#) (PDF, 349KB)



# EL Toolkit

- Chapters
- [Identifying All English Learner Students](#) (PDF, 1.5MB)
- [Providing English Learners with a Language Assistance Program](#) (PDF, 800KB)
- [Staffing and Supporting an EL Program](#) (PDF, 921KB)
- [Meaningful Access to Core Curricular, Extra Curricular Programs](#) (PDF, 1.75MB)
- [Creating an Inclusive Environment and Avoiding Unnecessary Segregation](#) (PDF, 910KB)
- [Addressing English Learners with Disabilities](#) (PDF, 1.27MB)
- [Serving English Learners who Opt-Out of EL Programs](#) (PDF, 386KB)
- [Monitoring and Exiting English Learners from EL Programs and Services](#) (PDF, 1.23MB)
- [Evaluating the Effectiveness of a Districts EL Program](#) (PDF, 907KB)
- [Ensuring Meaningful Communication with Limited English Proficient Parents](#) (PDF, 1.26MB)



# *QUESTIONS*



# Citizenship Status Issues

- US Citizenship is not required for a domiciled child to attend public school for free.
  - *Plyler v. Doe*, 457 U.S. 202 (1982); NJAC 6A: 22-3.3b
  - School Districts may **not** inquire about immigration status when enrolling a child
  - School Districts may **not** require as a condition of enrollment:
    - Proof of lawful admission to the U.S.
    - Social Security Number
    - Exception: Students seeking F-1 Visa



# Compulsory Education

- NJ Law requires parents and guardians to compel their children “between the ages of 6 and 16” to regularly attend the public schools of the district. NJSA 18A: 38-25
- Parents and guardians must assure that their children:
  - Attend a school which gives “equivalent instruction” to the public schools.
  - Receive “equivalent instruction” elsewhere than at school (ex.: home schooling)



# Attendance For Free

- NJ Law permits attendance in public schools for free “for persons over 5 and under 20 years old,” when they are:
  - Domiciled in the School District
  - Placed in a resident’s home by Court Order
  - Placed in a resident’s home by a state agency
  - Residing in a Nonprofit Institution
  - Homeless
  - Kept and supported by another person domiciled in the District for reasons of economic hardship
  - Kept by a person when the student’s parent/guardian is a member of the NJ National Guard or armed forces and ordered into active Military Service in war or national emergency



# Attendance For Free

- Students with disabilities may attend school for free between the ages of 3 and 21 if they are eligible for special education
- Right to enroll in school district includes enrollment for unaccompanied minors
- See [August 23, 2016 NJDOE](#) memo on homeless students, immigrant students, unaccompanied minors



# Establishing Residency – NJ Regs

- [N.J.A.C. 6A: 22](#). Student Residency
- [Sample Forms](#)
- See N.J.A.C. 6A:22 – 3.3 Housing and Immigration Status



# Establishing Residency – NJ Regs

- 6A:22-3.3 Housing and immigration status

(a) A student's eligibility to attend school **shall not be affected** by the physical condition of an applicant's housing or his or her compliance with local housing ordinances or terms of lease.



# Establishing Residency – NJ Regs

- 6A:22-3.3 Housing and immigration status

(b) Except as set forth in (b)1 below, **immigration/visa status shall not affect eligibility to attend school.** Any student who is domiciled in the school district or otherwise eligible to attend school there pursuant to N.J.A.C. 6A:22-3.2 shall be enrolled without regard to, or inquiry concerning, immigration status.



# Residency and F1 Visa Students

- 6A:22-3.3 Housing and immigration status
- (b)1 - The provisions of N.J.S.A. 18A:38-1 and this chapter shall not apply to students who have obtained, or are seeking to obtain, a Certificate of Eligibility for Nonimmigrant Student Status (INS form I-20) from the school district to apply to the INS for issuance of a visa for the purpose of limited study on a tuition basis in a United States public secondary school (“F-1” visa).
  - i. School districts permitting the attendance of F-1 students may adopt policies and procedures requiring advance payment of tuition, or entry into binding agreements for payment of tuition, before the school district will provide the requested I-20 form.



# Proofs of Domicile – NJ Regs

- See N.J.A.C. 6A:22-3.4
- Examples of acceptable proofs:
  - Property tax bills, deeds, contracts of sale, leases, mortgage, signed letter from landlord, etc.
  - Voter registration, licenses, permits, financial account information, utility bills, etc.
  - Court orders, state agency agreements
  - Receipts, bill, cancelled checks, insurance claims or payments, etc.
  - Medical reports, social worker assessments, employment documents, etc.
  - Affidavits, sworn statements, etc.
  - Documents pertaining to Military Status and assignment
  - Documents issued by a governmental entity.



# Permissible Proofs of Domicile

- MUST CONSIDER ANY EVIDENCE OFFERED, EVEN IF NOT IN LIST OF EXAMPLES IN CODE
- MUST LOOK AT “TOTALITY OF EVIDENCE”
- CANNOT REQUIRE ANY SPECIFIC PROOF(s)
- CANNOT REQUIRE ANY PROOFS LINKED TO CITIZENSHIP STATUS
  - No proof of citizenship or immigration status (except F1 visa) , no income tax return, no social security number, no proof of satisfying housing ordinances or conditions of tenancy



# Legal Disputes Over Residency

- Common Claims
  - SD enrollment practices discriminate against children of illegal immigrants
  - Claims that the SD required parents to produce either a driver's license or state ID
    - Documents that unauthorized immigrants won't have
  
- Common School Responses
  - Misunderstandings
  - Lawsuit is based on outdated materials on the SD website



## Proof of Domicile - Documents that Public Schools May Not Require or Request

- Income Tax Returns
  - Social Security Numbers
  - Documents relating to citizenship status (except F-1 Visa)
  - Documents relating to compliance with local housing ordinances, or tenancy conditions
- ❖ If a parent voluntarily discloses this information, then Schools can consider these documents.



# Immunizations

- A student coming to New Jersey from another state or country has 30 days to provide documentation of required immunizations and must be allowed to enroll in school
- Homeless child cannot be barred from enrolling and attending school while getting immunizations
- There is a religious exemption for immunization
- [NJ Department of Health FAQ](#)
- See N.J.A.C. 8:57-4.5



# Immunization Exemptions

## **Religious**

N.J.S.A. 26:1A – 9.1 provides an exemption for pupils from mandatory immunization “if the parent or guardian of the pupil objects thereto in a written statement signed by the parent or guardian upon the grounds that the proposed immunization interferes with the free exercise of the pupil’s religious rights.”

## **Medical**

N.J.A.C. 8:57 – 4.3 allows for exemptions to immunizations which are medically contraindicated. A written statement shall be submitted to the school, preschool, or child care center from a physician licensed to practice medicine or osteopathy or an advanced practice nurse (certified registered nurse practitioner or clinical nurse specialist) indicating that an immunization is medically contraindicated for a specific period of time, and the reason(s) for the medical contraindication, based upon valid medical reasons as enumerated by the Advisory Committee on Immunization Practices (ACIP) or the American Academy of Pediatrics (AAP) guidelines.



# Homeless Children, Immunizations and Enrollment

- The McKinney-Vento Act requires immediate enrollment, even if students are unable to produce immunization or other health related records. This applies to all students. (i.e. in state, out of state, out of country)
- The enrolling school and the McKinney-Vento liaison should work together to retrieve immunization records as soon as possible.



# Definition of Homeless under McKinney-Vento and NJ Law

- “Homeless Child” means a child or youth who lacks a fixed, regular, and adequate residence, pursuant to N.J.S.A 18A:7B-12 and N.J.A.C. 6A:17-2-2.
- The temporary residence of relatives or friends where the homeless child resides out of necessity because his or her family lacks a regular or permanent residence of its own.
- This includes but is not limited to: **substandard housing**, shelters, cars, motels/hotels, bus stations, hospitals, campsites. When a homeless child resides in a **temporary** school district, that school district liaison shall notify the liaison of the school district of origin within 24 hours of receiving notice from the parent, DCP&P, a shelter director, an involved agency, or a case manager.



# Homeless Students

- [NJDOE Homepage](#) - Homeless education
- [Homeless Liaisons](#) in each county
- [N.J.A.C. 6A:17](#) – Education of Homeless Children



# Foreign Student With HS Diploma

*B.A. and J.H. v. BOE of Somerville, 2009*

- NJ Case about a student that graduated in another country
- Establishes the need to examine situations on a case-by-case basis to determine whether education in native country is equivalent to a NJ state endorsed diploma
- CANNOT require student to translate or incur costs for translating transcripts
- Does not automatically entitle a student who has graduated from high school in another country and is under 20 to attend NJ high school
- No requirement for education IDENTICAL to NJ



# Key Questions to Consider

- Have the student's prior courses provided a sufficient depth and breadth of program?
- Will the student be able to pursue post-secondary education at institutions requiring high school graduation?
- Will the credential be accepted by an employer as satisfaction of a requirement for high school graduation?
- Has her education prepared her to participate meaningfully in the common cultural and civic life of our State and nation?



# Process for Review

- Petitioning parents are responsible for presenting a full recitation of the facts pertaining to their child's prior high school education
- Board of Education is responsible for conducting a thorough assessment of such facts in relation to the goals and requirements for NJ high school graduation
- Consider [Option 2](#) in the graduation requirements



# What if no records exist?

- Common concern – lack of educational records or transcripts
- Example – Haiti natural disaster in 2010
  - Lack of educational records available
  - Districts used Option 2 of graduation requirements, used locally designed assessments to properly place students



# Graduation Requirements – Option 2

- N.J.A.C. 6A:8 – Standards and Assessment
- N.J.A.C. 6A:8-5.1(a)2
  - May meet 120 credit requirement in whole or in part through completion of a range of experiences that enable students to pursue individualized learning opportunities
    - Independent study, online learning, study abroad, student exchange programs, structured learning experiences
    - Assessments that are administered by district or prior to enrollment may be used to demonstrate proficiency
    - Language proficiency at Novice-High may be established through the STAMP online assessment, OPI. MOPI, or DOE approved local assessment



# *QUESTIONS*



# Upcoming LEGAL ONE Workshops

- April 5, 2017 – English Language Learners and the Law, offered in collaboration with NJTESOL/NJBE and featuring Lori Ramella, NJDOE along with legal experts and practitioners
- Hot Issues in School Law
- Affirmative Action Officer Support Network
- Register at [www.njpsa.org/legalonenj](http://www.njpsa.org/legalonenj)



# Key Contacts

## **Bilingual Education**

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## **Homeless Education**

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