Advocating for ELL Students: Legal Do’s and Don’ts

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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.
Key Topics

• Constitutional Protections for English Language Learners
• Legal Issues Related to Student Enrollment
• US Dept. of Education Guidance on ELL Students and Civil Rights
• NJDOE Guidance on Supporting Gifted ELL Students
• NJDOE Guidance Related to Newcomers
• Comprehensive Equity Plan – A Framework for Action
• Emerging Issues in Social Media
Using the Law to Leverage Change

• While we want to change hearts and minds, sometimes we have to rely on the law to leverage necessary change

• NJDOE and U.S. Department of Education Guidance documents represent current official interpretations of state and federal law and are heavily relied upon when litigation occurs

• Don’t simply “go through the motions” of compliance checklists. Instead, have meaningful discussions on how to engage ELL students and their parents, celebrate our diversity, build on the strengths that all students bring, and acknowledge and address any discriminatory, illegal and/or ineffective practices

• Implementing best practices and focusing on the best interests of the child is also the best legal strategy!
Using the Law to Leverage From Below

Most of the people with extensive knowledge of best practices for ELLs are not in positions of power.

Tactfully sharing your knowledge will help those in power make the best decisions.

Although you may not be in a position to create policy, it is your job to assist those who do by informing and advising as to correct practices.
“... 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](#).
Getting Staff and Family Support for ELL Programming

- Parent Night Activities
- Engagement with community partners
- Social media presence
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
NJDOE August 22, 2018 Memo

• Enrollment Considerations for Immigrant Students
  • School districts are prohibited from implementing discriminatory enrollment practices, intentionally or unintentionally, that may exclude children from enrolling in public school based upon their immigration status pursuant to state regulations (N.J.A.C. 6A:22-3.3).

  • Additionally, N.J.A.C. 6A:22-3.4 prohibits school districts from making enrollment contingent upon the receipt of information or documents either protected from disclosure by law or pertaining to criteria that are not a legitimate basis for determining eligibility to attend school.
2018 Lawsuits Re: Immigration Status

• July 2018 – ACLU sues SD’s for asking about Immigration Status
  • The 12 districts facing lawsuits were the following:
    • Northern Valley Regional High School District (Bergen County)
    • Bellmawr School District (Camden County)
    • Sterling Regional High School District (Camden County)
    • Winslow Township School District (Camden County)
    • East Orange Community Charter School (Essex County)
    • West New York School District (Hudson County)
    • Sea Girt School District (Monmouth County)
    • Harding Township School District (Morris County)
    • Watchung Hills Regional High School District (Somerset County)
    • Montague School District (Sussex County)
    • Cranford School District (Union County)
    • Allamuchy School District (Warren County)
Enrollment of Newcomers

- May 2018 – NJDOE – Enrollment for Newcomers

- Key Issues Addressed:
  - What Must LEA’s Consider When Registering ELLs?
    - Unaccompanied minors, homeless, trauma, undocumented
  - How are English Language Learners Registered for School?
    - Make accessible for all students/parents
    - Home language survey
    - Make ELL identification and notice within 30 days of start of year, or 14 days if midyear
  - How Do I Review Foreign Transcripts and Transfer Credits?
    - Need standard protocol (See p.5 of guidance), may place according to age in short term
    - See Appendix F (Shows equivalencies for courses from Brazil, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Mexico)
  - What Are the Current High School Graduation Requirements?
    - NJ Supreme Court consent order allows status quo for 2019, 2020 regarding PARCC
    - Option Two
Good District Registration Practices

• Provide training for registration and guidance staff yearly

• Use DOE-provided webinars and official guidance documents

• Age-appropriate placement pending further evaluation

• Development of programming for newcomer/SIFE students where needed
Immigration Issue Fears in Schools

Consider

• ICE in the schools
  • “Safe Havens”
  • Schools not allowed to inquire re: Immigration Status
• If a parent keeps their child home from school re: Immigration Issue Fears
  • SD’s obligation re: student absenteeism
What you can do:

- Letter from Superintendent to community
- Training for Principals, building personnel including security
- “Know Your Rights” training for parents
- Assistance with creating Power of Attorney documents for custody, etc.
- Agreements with local law enforcement/coordinated outreach
Estimados padres y/o encargados:

Se nos han acercado familias preocupadas por las medidas tomadas por el gobierno de los Estados Unidos contra inmigrantes indocumentados. El Consejo de Educación de Vineland ha aprobado una resolución que respalda los derechos de los inmigrantes y estudiantes refugiados que protege los derechos constitucionales de todos los estudiantes. Queremos que nuestros niños y sus familias sepan que nuestras escuelas son seguras para los niños y que el distrito seguirá proporcionando un ambiente de aprendizaje positivo para todos los niños, independientemente de su estatus migratorio. La Corte Suprema de los Estados Unidos ha reconocido la importancia de la educación pública para todos los estudiantes, incluyendo los estudiantes indocumentados.

El Servicio de Inmigración y Aduanas de los Estados Unidos (ICE, por sus siglas en inglés) sabe que las escuelas, las escuelas preescolares e incluso las paradas de autobús escolar son áreas sensibles y tienen pautas estrictas y deben solicitar permiso antes de entrar en cualquiera de estas ubicaciones. También se incluyen en sus políticas incluyen los lugares de tratamiento médico y las instalaciones de atención médica, como hospitales, consultorios médicos, clínicas y centros de atención de urgencia. Sobre todo, que los lugares de adoración, como las iglesias, sinagogas, mezquitas y templos, no pueden ser ingresadas sin permiso.

Por favor, sepa que el Distrito Escolar de Vineland no mantiene archivos con información acerca del estatus migratorio de las familias. Esta información no es requerida para poder ser registrado para asistir a la escuela. Nuestra única preocupación es la educación de los niños, el proporcionar un lugar seguro y cultivar un ambiente adecuado para el aprendizaje. En muchas de nuestras escuelas tenemos programas de educación del carácter que ayudan a los niños a entender y respetarse unos a otros.

Si necesita ayuda o apoyo adicional con asuntos de inmigración, por favor, vea la lista de recursos que incluimos con esta carta que pueden ser de ayuda.

Sinceramente,

Dra. Mary L. Grucio
Superintendente de Escuelas

December 2017
Parents must acknowledge receipt of ICE letter in order to access Parent Portal

* There are Documents that need to be Acknowledged/Signed in order to have full access to

Required Documents must be acknowledged for EVERY student associated with your account.

Once acknowledged, this message will be removed and full access will be granted.

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<td>Immigration &amp; Customs Enforcement</td>
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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 and attend school during that time period

• Homeless child cannot be barred from enrolling and attending school while getting immunizations

• There is a religious exemption for immunization

• See N.J.A.C. 8:57-4.5

• [NJDOH Website](http://www.nj.gov/health/cd/imm_requirements/)


Note: The SD Homeless Liaison can help obtain these records

[http://www.state.nj.us/education/students/homeless/liaison.htm](http://www.state.nj.us/education/students/homeless/liaison.htm)
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.
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.
Supporting Gifted ELL Students

• P.L. 2017, c. 171 Statute mandated NJDOE Guidance

• NJDOE Guidance issued on November 7, 2018

• January 7, 2015 US Department of Education Dear Colleague Letter (p. 21)
Who are “gifted and talented” students?

• Students who possess or demonstrate high levels of ability in one or more content areas when compared to their chronological peers in the local school district and who require modifications of their educational program if they are to achieve in accordance with their capabilities. N.J.A.C. 6A:8-1.1
Gifted and Talented Programs

Source: Civil Rights Data Collection
Advanced Placement Participation

• English learners represent 5% of high school students, but only 2% of the students enrolled in an AP course and only 1% of the students taking and receiving a qualifying score of 3 or above on an AP exam.

Source: Civil Rights Data Collection
Identifying ELLs for Gifted and Talented Programs

• Qualitative and Quantitative Measures

• Multiple Criteria
  • Ethnographic assessment procedures
  • Dynamic assessments (opportunity to transfer newly acquired skills to novel situations)
  • Portfolios
  • Test scores in native language and English
  • English language proficiency tests
  • Teacher observation
  • Behavioral checklists
  • Parent interviews
  • Writing Samples
  • Rating Scales
  • Samples of creativity
  • Input from the Cultural Group of Which the Student Identifies
Identifying ELLs for Gifted and Talented Programs

• All assessments and checklists consider cultural and linguistic competencies

• Use multiple sources of data
  • Authentic assessment
  • Observing students
  • Intelligence tests
Identifying ELLs for Gifted and Talented Programs

• Tests to consider:
  • DISCOVER
  • Naglieri Nonverbal Ability Test (NNAT)-3
  • Cognitive Abilities Test (CoGAT)
  • Iowa
  • Raven’s Progressive Matrices
  • Otis-Lennon School Ability Test
  • Measures of Academic Program (MAP)
  • Renzulli Scale
  • Torrence Test
  • Teacher rating scales
  • Parent rating scales
Potential Challenges

• There may be a lack of clarity on how to address the needs of gifted ELL students
  • Rapid rate of English language acquisition may be indicator of giftedness, but gaps may still exist

• Parents may not understand the information provided to them about such programs
  • Legal obligation for meaningful communication with parents

• Tests selected may not be appropriate for ELLs, may include over-reliance on facially objective versus subjective measures
  • Tests may be heavily vocabulary-laden, or English only, not normed for English learners
  • May want to consider assessing in English first, then in native language for any missed questions

• Staff with certain language and cultural biases

• Trauma related to relocation, immigration, economic status
ELL Access to All Services

• N.J.A.C. 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.
References cited in NJDOE Guidance

• Castellano, J., Identifying and Assessing Gifted and Talented Bilingual Hispanic Students (1998)


NJDOE Resources

• May 2018 – NJDOE – Enrollment for Newcomers
  • [https://www.nj.gov/education/bilingual/resources/Enrollment Newcomers.pdf](https://www.nj.gov/education/bilingual/resources/Enrollment Newcomers.pdf)

• NJDOE Website – Enrollment of Immigrant Students and/or Undocumented Students
  • [https://nj.gov/education/bilingual/policy/immenrol.htm](https://nj.gov/education/bilingual/policy/immenrol.htm)

• Immigrant Students – How Schools Can Help
NJDOE Broadcast Memos

Enrollment Considerations for Homeless and Immigrant Students (8/25/15)

Providing ELL Program Services During State Assessments (3/15/16)

ELL Guidance for the Every Student Succeeds Act (3/28/19)
EL Toolkit

- [http://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/index.html](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.

- Phone # 1-800-872-5327
- TTY: 1-800-877-8339
- Email: ed.language.assistance@ed.gov
EL Toolkit

- **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)
- Ensuring **Meaningful Communication with Limited English Proficient Parents** (PDF, 1.26MB)
Staff Speech Issues
“Pickering Balancing Test”

• Did the statement concern a matter of general public concern?

• Was the employee speaking as a private citizen or during the course of his duties?

• Was the statement likely to disrupt a close working relationship?
Protection from Discrimination / HIB

• Southern Poverty Law Center report notes increase in discriminatory activities targeting English Language Learners, immigrant students
  • See https://www.splcenter.org/fighting-hate/extremist-files/ideology/anti-immigrant

• Examples of students chanting “Build that Wall”

• Parental fears that may lead to under-reporting of issues

• Need to be proactive, ensure that students and parents know their rights, and available protections
Halloween Costume – 10/31/18

• Idaho Teachers investigated for dressing up as “border wall” for Halloween

• Posted on SD’s Facebook page

• No First Amendment Right to engage in such political speech at a school function

Comprehensive Equity Plan Requirements

• Plan must identify and correct all **discriminatory** and **inequitable** educational and hiring **policies, patterns, programs** and practices affecting **facilities, programs, students and staff**

• Must develop plan every three years

• Need to review data on student performance

• Plan is due on or before June 14, 2019

Key Student Performance Data

• Consider discrepancies based on key demographic factors
• NAEP and PARCC data
• Promotion/retention/completion/drop outs
• Classification rates for Special Education
• Staffing practices and assignments
• Student discipline data
• Participation in rigorous programs
• Stakeholder satisfaction data
US Department of Education Office for Civil Rights Case Settlements

• Includes summaries of cases from NJ and across the nation

• Common themes include:
  • Failure to provide information to parents in native language
  • Improper enrollment procedures
  • Underrepresentation in high level courses
  • Lack of access to services provided to other students
  • Lack of information sharing

• See https://www.justice.gov/crt/discrimination-against-english-language-learner-students
For More Information

- www.njpsa.org/LEGALONENJ/
- David Nash, Esq., LEGAL ONE Director
- dnash@njpsa.org
- (609) 860-1200

- NJDOE Bureau of Bilingual/ESL Education - https://www.state.nj.us/education/bilingual/