

THE NJ CONSORTIUM FOR IMMIGRANT CHILDREN

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NJTESOL
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ENGLISH LEARNERS IN NEW JERSEY

EXPOSING INEQUITIES AND
EXPANDING OPPORTUNITIES IN THE
WAKE OF THE PANDEMIC

November 2021



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TABLE OF CONTENTS

- 1. Executive Summary.....4
- 2. Background: English Learners in the U.S. and N.J.....7
- 3. Where New Jersey Schools are Failing: Eight Key Findings and Stories from Teachers, Students, and Families.....17
- 4. The Rights of English Learners and Limited English Proficient Parents.....37
- 5. Recommendations.....47
- 6. Model Resolution on the Rights of English Learners.....52
- 7. Endnotes.....56

EXECUTIVE SUMMARY

The COVID-19 pandemic and resulting shift to virtual learning brought into sharp relief the inequities that English Learners (ELs) experience in New Jersey's public education system. Despite tremendous work on the part of educators, parents, and other caregivers to provide continuity of learning during this time, their efforts were hindered by school districts that fell short of meeting their obligations under New Jersey's Bilingual Education Code – the state regulations governing EL education – before and during the pandemic, and by a lack of sufficient guidance, support, and enforcement from the State, including shortcomings in the Code itself.

The aim of this report is to identify EL-specific needs and rights within New Jersey's education system; understand whether schools are meeting these needs and respecting these rights; and, where they are not, make appropriate policy recommendations. Affirming the urgency of this task in New Jersey, in September 2021, the U.S. Department of Justice (DOJ) entered into a consent decree with the Newark Public School District to rectify what DOJ called "wide-ranging failures to properly serve students learning English."¹

To illuminate the need for change in districts across the state, the report shares the experiences of New Jersey ELs; EL and immigrant parents; and English as a second language (ESL) and bilingual teachers, administrators, and counselors. These experiences cover a broad range of topics, from the technological inaccessibility of virtual classrooms to inadequate EL-focused professional development and a lack of bilingual mental health services. The narratives shared in this report reveal how students, parents, teachers, counselors, and administrators have seen their school districts fall short of fulfilling the rights of ELs, as well as the overlapping groups of immigrant students and students of color. These perspectives are not critiques of teachers, counselors, administrators, or schools. Rather, taken as a whole, they reveal how important it is for New Jersey to make systemic changes to the Bilingual Education Code, and to ensure that current and future provisions of the Code are actually enforced, so that educational systems do not continue to fail ELs.

The powerful experiences shared here by EL students, EL and immigrant parents, and EL and bilingual educators can serve as the building blocks for equitable policies within school districts as a new era in education begins in the wake of the pandemic.

Section Two of this report offers background information on ELs nationwide and in New Jersey. The report's third section summarizes data from the Understanding ESL/Bilingual Services During the COVID-19 Pandemic: Educator/Supervisor Survey (hereinafter "Understanding ESL/Bilingual Services Survey"). This long-format survey garnered responses from eighty New Jersey bilingual and ESL educators. Section Three also compiles five stories of New Jersey bilingual educators and experiences shared by ELs and their families. The fourth section sets forth the legal rights of EL students and limited English proficient parents. The fifth section offers a set of policy recommendations. The last section provides a model resolution for school districts.

This report, the Understanding ESL/Bilingual Services Survey that informs it, and its recommendations for change are a collaborative effort of NJ Teachers of English to Speakers of Other Languages/New Jersey Bilingual Educators (NJTESOL/NJBE), the New Jersey Consortium for Immigrant Children (NJCIC), and Education Law Center (ELC).

Throughout this report, we have chosen to use the current language of the New Jersey Department of Education (NJDOE) and the Bilingual Education Code (i.e., English Language Learner or English Learner (EL), Limited English Proficient (LEP), etc.). as reflected in our recommendations, we believe this language does not best align with current educational research and practices, which advocate for using asset-based, linguistically and culturally sustaining approaches.

This report makes the following key recommendations for change to school districts and the NJDOE:

- Develop and implement a formal and transparent compliance and accountability process to ensure that every school district implements the requirements that are already part of the New Jersey Bilingual Education Code.
- Establish a “complaint investigation” system for reports of violations of laws protecting ELs, similar to that which exists for special education.
- Change language throughout NJDOE documents so that it more closely aligns with current educational research and asset-based perspectives.
- Establish a clear and comprehensive definition of language accommodations, including first and target language supports that provide access to content concepts.

- Require, provide guidance on, and endorse these language accommodations in every classroom where ELs are students in order to provide access to grade-level content as legally required.
- Facilitate effective delivery of special education, related services, and accommodations for ELs with disabilities.
- Require, as part of the Three-Year Plan required of all districts, EL-focused professional development for all in-service teachers and teacher candidates, all supervisors and administrators who evaluate these teachers, and all staff members, as ELs are the responsibility of all teachers and staff.
- Provide technology and access to Internet services, along with accessible training, to EL students and LEP families.
- Share all essential information and communications from school districts in a language that parents and caregivers who are new to English can understand, and in a format that is accessible, even for those who are new technology users.
- Create and widely communicate clear pathways to graduation for ELs.
- Provide linguistically and culturally appropriate mental health and counseling services for ELs and their families.
- Allocate funds to support career pathways and recruitment of bilingual and/or Black, Indigenous, and people of color (BIPOC) educators, mental health professionals, counselors, and administrators, who are underrepresented in the New Jersey PK-12 educational system.
- Create clear pathways for ELs to achieve the Seal of Biliteracy.

BACKGROUND: ENGLISH LEARNERS IN THE U.S. AND N.J.

The state of New Jersey is home to 686 operating school districts with 2,493 schools and 87 charter schools, ranging from large, urban districts to small districts serving rural populations. In the 2020–2021 school year, according to NJDOE, over 1.28 million students enrolled in New Jersey’s public schools,² of whom approximately 93,000 were ELs, making up about 7% of the total enrolled student population.

This section reviews some important facts and statistics about ELs in New Jersey and nationwide that can help us understand the impact of state education policy and the pandemic on this group of students. The pandemic and state responses to it have in many cases compounded inequities that ELs, immigrant students,³ and their families were already facing across class, race, and national origin lines.

A Note on English Learners and Immigrant Students

In 2015, the U.S. Department of Education recorded approximately 840,000 first-generation immigrant students enrolled in K-12 public schools, and more than 4.8 million ELs across all public schools.⁴ The majority of ELs are U.S. citizens, many born to U.S. citizen parents and others born to immigrant parents.⁵ In 2005, the Migration Policy Institute reported that 77% of ELs in pre-kindergarten to fifth grade and 56% of ELs in grades six to twelve were born in the United States.⁶

Claude Goldenberg, the Executive Director of the Center for Language Minority Education and Research at California State University–Long Beach, provides the following definitions:

- English Language Learner (ELL) or English Learner (EL): A student who speaks a language other than English, is limited in his/her/their English proficiency, and is learning English (usually) as a second language.

- Immigrant: Anyone who is born outside of the United States and territories.⁷

Immigrant students and ELs are two distinct groups. These groups do partially overlap, and they face overlapping challenges.

Nonetheless, not all ELs are immigrants and not all immigrants are ELs. For instance, in 2019, 16.5% of foreign-born individuals in New Jersey stated that they only speak English at home, while a little over 2% of U.S.-born Americans in New Jersey reported speaking English less than "very well."⁸ Such data reminds us that many immigrants speak fluent English, while some U.S.-born citizens do not.

This report recognizes the significant overlap between immigrant students and ELs; however, it also recognizes that these groups often do not require the same specific accommodations and support, and are sometimes afforded distinct legal rights. What is more, even within these two groups, there is important variability.

Within the group of immigrant students, unaccompanied minors have distinct needs. In 2019, Customs and Border Protection encountered nearly 73,000 unaccompanied minors crossing the border, of whom over 55,000 were dispersed across the country to sponsors, likely relatives or parents.⁹ A United Nations survey found that the majority of unaccompanied minors were fleeing persecution, violence, or abuse and might need humanitarian protection.¹⁰ As such, unaccompanied minors may be in greater need of bilingual mental health services at their schools.

In an interview, an immigrant student from a school district in northern New Jersey reported, "I do have friends that told me about their experience coming [to America, sometimes unaccompanied], and it's very scary. In the process maybe they saw death or rape or things like that. I feel like they often keep quiet because they don't want to expose their immigration status."

This student thinks incoming immigrant students should have access to "professional help from the very beginning" and that counselors need to "straight up [say that] information shared [by students] is confidential." ¹¹ The experiences of ELs and immigrant students can have shared elements, as well as elements that are distinct, like some immigrant students' fear of disclosing personal experiences that could reveal immigration status.

This report aims to address these nuances by clearly using labels like "immigrant student," "EL," and "unaccompanied minor." It aims to both bring awareness to the overlap between ELs and immigrant students, and to acknowledge that ELs and immigrant students are two distinct groups with sometimes differing life experiences and needs.

Who Are English Learners in the U.S.?

ELs are disproportionately students of color.

In 2014–15, there were more than 4.8 million ELs across the country.¹² Nearly all of them (97%) participated in programs for English learners. More than 75% of ELs in 2014–15 were Hispanic or Latinx, while over 10% were Asian or Asian-American. The U.S. Department of Education also identified Black ELs as the fourth largest group at 3.6%. Among all Black ELs, 40% speak Spanish at home.¹³

Ethnicity	ELs	All Students
Hispanic or Latinx	3,745,646	12,719,359
Asian or Asian-American	516,586	2,449,136
White	283,253	24,918,224
Black	172,250	7,802,140
Native or Indigenous	38,081	520,462
Two or more races	29,527	1,602,423
Pacific Islander	26,614	175,653

Notes: This chart is adapted from U.S. Department of Education, Our Nation's English Learners fig. 1, <https://www2.ed.gov/datastory/el-characteristics/index.html>. The original data used in the Department of Education's chart come from U.S. Department of Education, EDData Data Warehouse (EDW), 2014–15. SEA File C141, LEP Enrolled. Extracted April 3, 2017. U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), "State Nonfiscal Survey of Public Elementary/Secondary Education," 2014–15.

ELs are more likely to be economically marginalized.

In the 2014-15 school year, ELs accounted for 10% of the total K-12 student population. However, ELs represented over 14% of all homeless students enrolled in a public school and 15% of all students who are served by either public Title I Schoolwide Programs or Targeted Assistance School Programs, both of which support economically marginalized students.¹⁴

The American Community Survey 2008-2012 showed that 65% of all ELs met the threshold for free or reduced-price school lunches, contrasting with 36% of non-ELs.¹⁵ The below graph represents the range of family incomes of EL and non-EL students attending public schools. As the graph shows, during this same time period, EL students' families were disproportionately represented in the bottom two quintiles of income.

	Quintile 1	Quintile 2	Quintile 3	Quintile 4	Quintile 5
ELs	34.6	27.4	16.8	11.6	9.7
Non-ELs	19.3	19.6	20.2	20.4	20.5

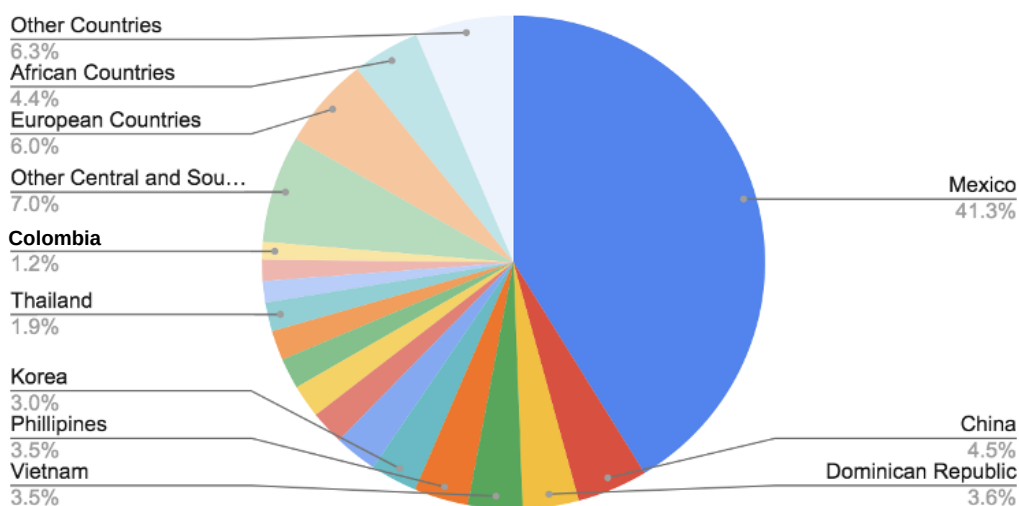
Notes: This chart is adapted from National Academies of Science, Engineering, and Medicine, Promoting the Educational Success of Children and Youth Learning English: Promising Futures 81 tbl. 3-3 (2017), <https://www.nap.edu/read/24677/chapter/5>. The range of family incomes found in each quintile is as follows: Quintile 1: Bottom 20% of income; Quintile 2: 20th to 40th percentile of income; Quintile 3: 40th to 60th percentile of income; Quintile 4: 60th to 80th percentile of income; Quintile 5: top 20% of income. Sample = children ages 5-18. The original data used to create the estimates in the National Academies chart are from the American Community Survey, 2008-2012.

The education system is more likely to classify ELs as having a specific learning disability.

According to one estimate, thirty-eight percent of non-ELs with disabilities have been diagnosed with a specific learning disability, whereas nearly 50% of ELs with disabilities were diagnosed with a specific learning disability. Additionally, 21% of ELs with a disability were diagnosed with having a speech or language disability, contrasting with 17% of non-ELs with a disability.¹⁶ One disturbing explanation for this discrepancy is that schools misdiagnose ELs because they have mistaken language differences for learning differences. This explanation is borne out by decades of studies that have found English learners to be consistently overrepresented in special education programs.¹⁷

ELs in the United States have diverse national origins.

Origin Countries of Foreign-Born Children Who Are English Learners



Notes: This graph is adapted from National Academies of Science, Engineering, and Medicine, Promoting the Educational Success of Children and Youth Learning English: Promising Futures 70 tbl. 3-1 (2017), <https://www.nap.edu/read/24677/chapter/5>. This graph estimates the origin countries of non-U.S.-born children who are ELs using data from the American Community Survey 2008–2012.

ELs nationwide attend school in urban, suburban, and rural districts.

A study of 2018 data by the National Center for Education Statistics found that ELs constituted approximately 15% of total public school enrollment in cities, 10% in suburban areas, 7% in towns, and 4% in rural areas.¹⁸

Who Are New Jersey's English Learners?

In the 2020–2021 school year, New Jersey enrolled over 93,000 EL students, making up approximately 7% of the total enrolled student population — meaning the number of ELs enrolled in New Jersey schools had nearly doubled since 2010.¹⁹ Seventy-nine percent of New Jersey schools, or 1,982 schools, and approximately five-sixths of New Jersey school districts have at least one EL student.²⁰ As is true nationally, certain districts have a much larger proportion of ELs than the state average overall.

Immigrants are a robust part of New Jersey's population.

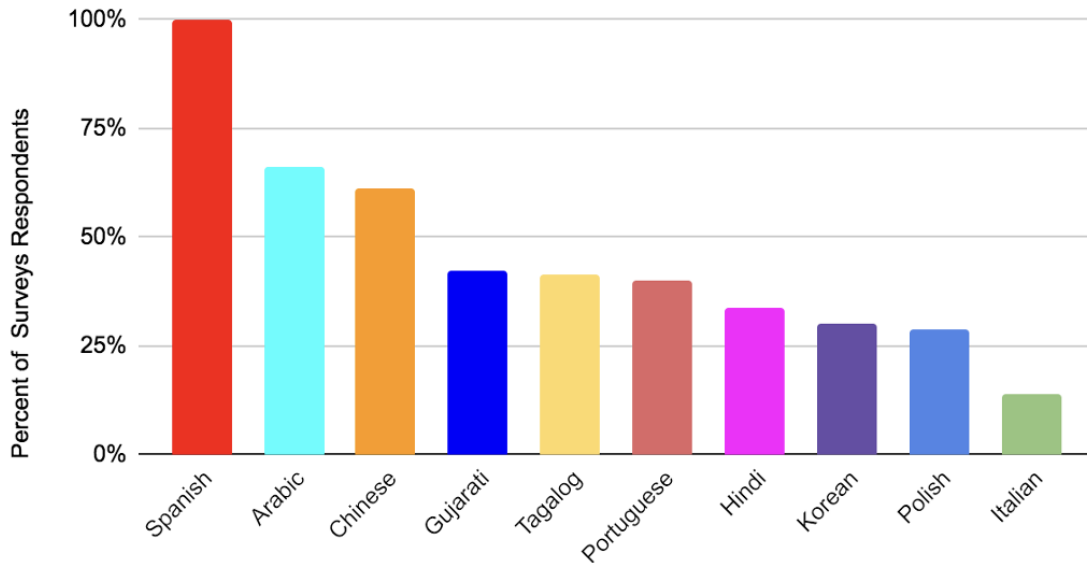
Immigrants make up a large and thriving portion of New Jersey's population, and a significant portion of its ELs. Nearly one-quarter of New Jerseyans were born outside the United States, while about one in six residents is a U.S.-born citizen with at least one immigrant parent.²¹ The share of school-age children with one or more non-U.S.-born parents is larger in New Jersey (39%) than in the United States overall (26%).²² Many students, including those who are not ELs, have parents who speak languages other than English.

In 2018, two million immigrants made up 23% of New Jersey's population.²³ Approximately 475,000 undocumented immigrants lived in New Jersey, making up 22% of the state's immigrant population and 5% of its total population.²⁴ Between 2010–2014, nearly 10% of children in New Jersey were U.S. citizens living in mixed status households with at least one undocumented family member.²⁵

New Jersey ELs speak a variety of languages, and immigrant ELs come from many different backgrounds.

In 2018, the top countries of origin for New Jersey immigrants were India (13% of immigrants), Dominican Republic (10%), Mexico (5%), Ecuador (4%), and the Philippines (4%).²⁶ As of March 2021, the top ten languages spoken at home by English learners in New Jersey were Spanish, Arabic, Portuguese, Haitian Creole, Chinese, Korean, Gujarati, Urdu, Bengali, and Russian.²⁷ The below graph shows the languages spoken by the ELs who are taught by our survey respondents.

What language(s) are spoken by one or more of your English language learners?



Notes: These statistics are taken from the Understanding ESL/Bilingual Services During the COVID-19 Pandemic Survey, which is specific to New Jersey, and represent the languages survey respondents reported that their students spoke.

New Jersey ELs are less likely to graduate high school.

Seventy-six percent of ELs in the class of 2017 graduated high school, compared to 91% of all public school students.²⁸ This statistic is connected to a lack of resources and supports for ELs. Even before the pandemic, between 2004 and 2016, New Jersey reported a shortage of teachers for ELs, making it one of thirty-two states to have done so between 1990 and 2016.²⁹

How Did Immigrants and English Learners Fare During the Pandemic?

The pandemic's unequal impact on ELs has been intersectional, extending across race, class, ethnicity, and national origin lines, and affecting EL families and the overlapping groups of immigrant families and families of color in virtually every area of their lives.

Immigrants and people of color, both nationwide and in New Jersey, were disproportionately overrepresented in frontline jobs and often lacked health insurance, exposing them to serious risk and contributing to racial disparities in COVID-19 cases and deaths.

Not all communities, either nationwide or in New Jersey, have suffered equally during the pandemic. Immigrant families, who make up a large percentage of EL families in New Jersey, have been disproportionately harmed. Partly, this was due to our society's failure to protect essential workers from COVID-19. About three-fourths³⁰ of undocumented immigrants in the labor force are classified as essential. Moreover, immigrants make up 40% of all New Jersey healthcare support workers.³¹

Approximately 1.4 million immigrant workers made up 29% of New Jersey's labor force in 2018, and were particularly represented in the healthcare, manufacturing, retail, and construction industries. All of these industries require in-person work, increasing the risk of exposure to COVID-19 for immigrants.³² Moreover, the private-sector businesses in New Jersey that were directly affected by the COVID-19 pandemic include restaurants, bars, hotels, entertainment, non-food retail, passenger transportation, and personal care services. Due to long term racial and ethnic discrimination, these industries have become a key source of employment for low-income workers, a group which is disproportionately made up of immigrants and people of color. Across the nation, there were approximately 125,000 undocumented workers who were employed in the service sector. These workers were both more likely to lose employment, income, and healthcare due to the pandemic downturn and, in cases where they did not lose work, were more likely to be exposed to COVID-19.³³

These racial disparities have been compounded by a lack of access to health insurance for many immigrants and people of color. New Jersey Policy Perspective has noted that Latinx New Jerseyans were three times more likely than white residents to lack health insurance.³⁴

The consequences of these factors have been devastating. For instance, a 2020 poll found that 1 in 10 Latinx households included someone who became infected with the coronavirus. By March 2021, 361 Latino men under 50 in New Jersey had passed away from COVID-19. This means Latino men made up 43% of the confirmed COVID-19 fatalities among adults under 50 at that time, despite comprising only 12% of the under-50 population in New Jersey.³⁵ Data collected through March 2021 show that Latinx people were most likely of all racial groups in New Jersey to contract COVID-19, while Black people suffered a disproportionate rate of hospitalization and death relative to other groups.³⁶

Schools across the country did not adequately support ELs' technology needs in the pandemic.

Schools nationwide often marginalized ELs during the pandemic by regularly failing to provide them with the technology and internet connectivity needed to participate in virtual school. In the Sacramento City Unified School District, for example, more than 500 students, 44% of whom were ELs, became chronically absent after the school district switched to remote learning in mid-March 2020. Likewise, in Chicago, only about half of ELs logged in to the district's remote learning platform at least three out of five days during the week when the school district had the highest rate of participation in online learning.³⁷

On March 10, 2021, NJDOE claimed New Jersey had closed the "digital divide."³⁸ However, despite NJDOE's efforts to address technology access, many respondents to the Understanding ESL/Bilingual Services Survey that informs this report indicated it was still a concern, with almost 12% of respondents stating that there were no options available for their ELs who struggled in 2020 and 2021 due to technology inaccessibility.³⁹

Partly due to Trump-era rules designed to make immigrants hesitant to use public services, U.S. families with non-permanent resident members faced greater financial hardships in the pandemic.

In 2019, the Trump Administration issued its "public charge" rule, which was designed to sow confusion in immigrant communities regarding the immigration consequences of using public services. Though the rule has now been repealed, disinformation about it harmed ELs from immigrant families during the pandemic. In 2020, one in five immigrant families with children, and almost three in ten economically marginalized immigrant families with children, reported that they or a family member avoided one or more forms of public assistance due to immigration concerns.

The confusion caused by the public charge rule could not have come at a worse time. In 2020, more than one-sixth of immigrants experienced problems paying rent, a mortgage, or utilities, and nearly three in ten worried about having enough to eat or being able to pay utility bills in the next month. Almost three in ten immigrant families reported that a family member had missed out on needed health care because of cost, or that they were having trouble paying medical bills. More than three in ten had a family member who could not access insurance.⁴⁰

These stressors took a severe toll on the physical and mental health of many ELs and their families, as the results of the Understanding ESL/Bilingual Services Survey reflect.

WHERE N.J. SCHOOLS ARE FAILING

EIGHT KEY FINDINGS AND STORIES FROM TEACHERS, STUDENTS, AND FAMILIES

How We Prepared These Findings

In the spring of 2021, NJTESOL/NJBE distributed an in-depth survey to ESL and bilingual educators, administrators, and counselors among its membership to better understand what services, accommodations, and resources ELs were offered prior to, and during, the pandemic. Eighty individuals responded to the survey, though not all survey respondents answered every question. We conducted comprehensive follow-up interviews with five of the participants. Thanks to our partners at Make the Road New Jersey, we also had the opportunity to conduct listening sessions with their members and heard from dozens of current and former ELs and their parents and caregivers about their experiences of the pandemic. Their comments are also incorporated into this report.

Eight Key Findings on EL Education in NJ

Finding 1: Over 1/3 of all survey takers said that lack of compliance with state regulations for ELs was a major problem at their school.

The New Jersey Bilingual Education Code (N.J.A.C. 6A:15) sets forth state regulations to ensure all ELs can access their legal right to a “free, appropriate public education.” Its purpose is to protect the rights of EL students, ensure they are provided bilingual education and related services, assist district boards of education in providing educational services to ELs, and mandate evaluation of the effectiveness of the education provided to ELs.

Yet according to survey respondents, many schools are failing to meet the standards of the Bilingual Education Code. Of the 61 educators who responded to a question about whether lack of compliance with existing regulations is a major problem, 30 of these survey takers – nearly half who responded, and over 1/3 of all survey takers – said that lack of compliance with the Bilingual Education Code and other state regulations for ELs was a major problem at their school.

Finding 2: Nearly 1/3 of survey respondents reported no language accommodations at their school for ELs in English-only classes before the pandemic, while 10% reported that Google Translate was a primary language accommodation their school offered to EL students.

At the core of the Bilingual Education Code is the requirement that schools provide language services for ELs so that they can learn English and receive an education in other subjects at the same time. A student from a small suburban school in northern New Jersey, speaking about her first months in the United States, succinctly captured why language accommodations are essential: "I had just arrived in this country and I did not know how to speak well and I was afraid to speak." Another student who immigrated to New Jersey from Colombia said that the "ESL program often saw students like me as incompetent and not 'smart enough.' I eventually had to learn English on my own and constantly prove myself that I was capable of taking higher level courses and [being] part of the regular classroom." Both experiences show how imperative language services and accommodations are to students' academic success, as well as their mental health.⁴¹

However, not all schools provided these essential supports. Of all survey respondents, 23 respondents, or 28.7% of the total, stated that before the pandemic, no language accommodations were offered to ELs in content classes. An additional 10 respondents, or 12.5% of the total, said accommodations were offered sometimes, rarely, or "depend[ing] on the teacher." In response to a separate question, 10% of respondents stated that Google Translate was a primary language accommodation their school offered to ELs. This is problematic as Google Translate focuses on decoding, or the translation of words into their equivalents in the target language (sometimes without context), instead of understanding and meaning. As a result, the translations are often confusing or erroneous.

In some cases, teachers reported that their schools did not provide educational programming for ELs, while others said their school provided it at a lower intensity than the Bilingual Education Code requires. A teacher from a small urban northern New Jersey school reported that "two elementary school students who arrived early last year have never received services." Another survey taker stated that EL services in the pandemic had dropped to thirty minutes a day – a decrease from the previous norm of forty minutes, and not enough for students to remain current in their classes. The Bilingual Education Code requires a daily period of ESL scheduled for the same amount of time as periods providing instruction in core subjects.

Finding 3: Several respondents reported that technological problems severely impeded their students' ability to receive an education, while 12% of high school educators surveyed said their school offered no options for ELs struggling due to technology inaccessibility to prevent them from aging out.

The Bilingual Education Code requires that schools provide EL students with “equal educational opportunities” to non-EL students.⁴² For many students during the pandemic, accessing “equal educational opportunities” has meant gaining access to remote learning technology and the Internet. During the pandemic, NJDOE claimed that it had closed the digital divide and that students statewide could access remote learning. Unfortunately, several respondents, as well as parents who participated in our listening sessions, stated that lack of technology access and support for EL students have limited ELs' opportunities to learn while school has been remote. Others described losing students entirely due to technology issues.

Parents and caregivers from an urban school district in northern New Jersey offered descriptions of what technology inaccessibility looked like during the pandemic, with one parent stating that “online classes were difficult because we did not know how to use the Internet.” Another parent said: “At first we did not have enough computers, only one for three children. The teachers gave them no shows [absences] 18 times, even though we told the teachers what was going on. The teachers told us it was our [the parents'] responsibility.”⁴³ Experiences such as this, and those of the nearly 12% of high school educator respondents who reported no options at their schools for ELs struggling due to technology inaccessibility, help explain why nearly half of high school educator respondents said they had seen an increase in student dropouts or students at risk for dropping out during the 2020–2021 school year.

A high school teacher from a small, suburban northern New Jersey district similarly reported that her school failed to account for immigrant families' needs as it managed the transition to remote learning. She stated: “When my school district went remote in March 2020, every child was given a Chromebook, [but] many of the used Chromebooks malfunctioned and needed to be replaced. The Chromebooks could only be swapped out during school hours, a time that the parents of many of my ELs spent working. Our school also didn't give out enough hot spots, which was hard on my ELs who lived in locations with poor internet connectivity.”

Even for ELs who did get a hotspot, “a big issue . . . was that a brother or sister would also be on the hotspot or WiFi and the system wouldn’t be able to handle two or more people.” This teacher, like several others, reported that promising and engaged students stopped attending classes during the transition to remote learning. A student from this teacher’s district agreed with her assessment of the technological challenges, stating that the “first two weeks of remote learning was the hardest part. I didn’t know how to join meets, how to do assignments, etc.”⁴⁴

While some districts made efforts to help students manage the transition to remote learning, these efforts often failed ELs because they did not account for the possibility that ELs may not have interacted with programs like Google Classrooms before, and, therefore, needed bilingual technical support. ELs and their families are not at fault for technological challenges or lacking the resources (such as a computer) needed to participate in virtual school. Rather, these challenges reveal systematic inequity within New Jersey’s education system and society more generally.

Finding 4: Many survey takers reported that their schools failed to communicate information to ELs’ parents in a language they could understand or a format they could access.

State and federal laws require school districts and the state to ensure meaningful communication with parents in a language they can understand. However, many survey respondents said that notices to parents, including notices about technology or schedule changes, were not translated or interpreted for parents during the pandemic. A teacher at a small, urban northern New Jersey school said that at their school, “there are no translation services to help communicate with parents. Important messages [and] letters are not translated either.” This teacher has taken it upon herself to translate: “My parents reach out to me to translate for them. I translate home language surveys and letters to parents on my own.”

The same teacher noted that even when emails are sent home in parents’ native language, many families do not receive them because email is not the preferred form of communication and/or may be inaccessible due to parents’ literacy skills. As a result, during the 2020–2021 school year, parents at this teacher’s school never received important messages, including information about the “school being opened [or] closed, the school running on a different schedule, and how to follow COVID-19 procedures.”

In addition to language differences, technological access created severe hurdles to parent communication. A teacher at a small, urban southern New Jersey school noted that “all the communication with families was being done digitally, and much of it in English.” A teacher at a small, suburban school in northern New Jersey put it succinctly: “Because the school district prioritizes email as a method of parent communication, ELs’ parents are often not consulted on major decisions regarding their child.” Both experiences demonstrate how school districts that use solely digital, English-language communications are not considering accessibility or parents’ level of comfort with or access to technology.

Finding 5: Over 1/4 of respondents reported no attendance recovery policy at their school, and more reported that their school had not communicated the policy to ELs. At some schools, ELs are dropping out in high numbers.

New Jersey’s 2019 high school dropout rate was 3.2%, the second lowest in the nation.⁴⁵ However, survey respondents and interviewees suggest that this number is significantly higher for ELs than the general population, particularly in the past year. Of all 80 survey respondents, 26% reported that their school had no attendance recovery policy (a school policy to permit students to earn credit or graduate to the next grade where they have accrued some absences from class). Of high school educators who completed the survey, nearly 38% stated that they have seen an increase in ELs dropping out of school during the pandemic. In a striking example, a former counselor at a small, urban northern New Jersey school stated that 180 ELs had dropped out of her school district during the pandemic, but were coded as having “transferred out” even though “everyone knows [they] aren’t transferring anywhere. . . . It’s a political thing. If affluent families see a high dropout rate at a public school, they won’t send their kids there.”

In some cases, students “disappeared” from virtual classes. A teacher from an urban mid-sized school in southern New Jersey stated that in her classes, “one student went to visit her mother in Puerto Rico and just stopped showing up to virtual classes entirely, but no form of communication was ever offered as to why. Another student came from a family of three kids that all became students in this school district while the pandemic was going on. These students’ mother left partway through the school year. After that, one of the kids who had been doing really well started to struggle and stopped showing up to school. Because I never knew this student in person, I had less of a relationship with them, and so I wasn’t able to get this student to share with me why they weren’t showing up to class.”

Compounding the likelihood of dropouts, nearly 12% of high school educators who responded to the survey stated that their school district does not allow for flexibility (taking into account individual circumstances) for chronically absent students who are over 16 when assessing whether the student has dropped out. Furthermore, two high-school educators reported that their school district pressured ELs over the legal age to drop out.

A teacher at a small suburban middle and high school in northern New Jersey found that her school did not support students with frequent absences, even if these were related to the illness or death of a parent or to caregiving responsibilities for younger siblings. “If a student is absent more than 18 days (regardless of the reason) it goes on the school’s report, which, in turn, can limit school funding. Because my school is concerned about being coded in such a way, the administration is more focused on putting regulations in place than they are in offering support to students who miss school to take care of sick family members or younger siblings.”

The former counselor whose district experienced 180 inaccurately coded dropouts stated that at her school, “the expectations are pretty low” for ELs. She described the attitude at her school: “[ELs] ... are [believed to be] kids that are more than likely going to drop [out]. The guidance counselors have a lot of other [non-EL] kids. So, they don’t always make time for ELs because they believe them to be high need. ELs do need more resources and time; however, that doesn’t make them less deserving of an education.”

Finding 6: Nearly half of respondents reported no bilingual mental health services in their district for ELs, even during the pandemic.

The Bilingual Education Code requires that ELs have full access to supportive services available to other students, including counseling, tutoring, and career guidance; as feasible, the Code specifies such services should be provided by bilingual personnel who are familiar with and knowledgeable of the unique needs and background of the ELs and their parents.⁴⁶ Despite this requirement, over 41% of all survey respondents reported that there were no bilingual mental health services in their district, with many indicating that English-speaking students did receive these services. At the same time, nearly 34% of all survey respondents noted an increase in mental health issues or concerns among ELs or their parents during the pandemic.

In many cases, immigrant ELs have faced difficult migration journeys or experienced severe traumatic events before arriving in the United States. For instance, one teacher from a large urban school in southern New Jersey who reported no bilingual mental health services at her school stated that one of her students witnessed her grandmother's murder before she left her home country. EL students' often serious mental health needs can make the lack of responsive resources a significant hindrance to their ability to learn.

A group of EL students from a suburban school district in northern New Jersey shared that during the pandemic, they had coped with the deaths of parents and other stressors without access to mental health support. One student stated that the most difficult moment of the 2020-2021 school year was when "I heard my father passed away. It gave me a shock and I was too late to say happy Fathers' Day and thank you for everything." Another student from the same northern New Jersey suburban school district said that "something I would have liked support for from school" was "when I felt sad and down."⁴⁷

Many educators who responded to the survey felt strongly that hiring bilingual counselors would be an important first step in creating a positive learning environment for ELs. A survey respondent from a medium-sized, suburban central New Jersey school explains: "We desperately need our district to hire bilingual counselors. We have relied upon the traditional school counselor and SAC [Student Assistance Counselor] to provide services with the help of the district interpreter (who is stretched very thin). This also complicates private matters by having an additional person be a part of students' private conversation (students become even more hesitant to talk about their issues and stop seeking help in this way)." Similarly, an educator at a small, suburban central New Jersey school stated that "we have zero administrators and support personnel (psychologists, counselors, etc.) in the district who speak any of our students' native languages. They have had plenty of opportunities over the past several years to hire such individuals, but they always go with English-speaking-only hires."

Finding 7: Some EL students with disabilities did not receive appropriate services and accommodations during the pandemic.

State and federal law guarantees appropriate special education programs and services to all eligible students with disabilities, including ELs. Nonetheless, over 10% of all survey respondents said ELs with disabilities did not receive appropriate services during the pandemic, while nearly 24% said that "sometimes" ELs with disabilities received the support they needed.

A teacher from a small, suburban central New Jersey school agreed, noting that there "needs to be a much clearer process (with resources provided) about how/when to assess ELs for disabilities...[T]his is a battle I've been fighting for years and I've lost a handful of students as a result of my district mishandling/ignoring the students and their needs." A teacher from a small, urban northern New Jersey school stated that "Special Education [EL] students are often ignored and forgotten about."

Finding 8: Some teachers felt that, in general, their EL students were being "ignored" or "forgotten."

Though some educators said that their schools had strong programming for ELs, others indicated that their schools were failing these students, and expressed a sense of frustration and helplessness. The "supports [school districts] have created don't provide ELs with the support they actually need," stated a northern New Jersey teacher.

Other teachers echoed this perspective. Another northern New Jersey teacher stated that her school is "not supporting our ELs. . . but they will throw around terms and jargon to make it seem like we are," while an urban southern New Jersey teacher added that, at her school, ELs "are being ignored by many teachers, failing or just passing them through to 'get them out of their classes.'" A southern New Jersey teacher agreed, stating that at her school, "teachers are not truly equipped to support our ELs and our curriculum is a disgrace."

A former counselor from northern New Jersey sums up her experience: "I think they work hard at keeping [ELs] . . . invisible. COVID-19 made that more so. But even before COVID-19 [ELs] were isolated and kept apart from the rest... We need a system that's better than that."

"ENGLISH LEARNERS HAVE BECOME INVISIBLE"

**NARRATIVE FROM A FORMER BILINGUAL COUNSELOR,
LARGE SUBURBAN NORTHERN NEW JERSEY SCHOOL**

The kids I work with [ELs who are immigrants] go from one injustice to another. I work specifically with unaccompanied minors. Children are leaving their home countries due to an enormous number of different injustices. Then they go to the border and face more injustices – detention centers, shelters, being away from family, being placed with relatives who they may or may not know [after they leave detention]. Then they get placed into a school district and shuffled into a bilingual program.

We're lucky that our program has caring teachers who love and support ELs, but the expectations [of many educators and administrators] are pretty low . They believe ELs are more than likely going to drop [out of school] due to the many challenges they have to face to be in school. The guidance counselors have a lot of other [non-EL] students, and aren't able to prioritize ELs the way they should be. ELs are kids who need more resources than the schools are currently choosing and/or prepared to provide. Because of this it has become part of my job to help connect my students to community resources, navigate the school system, and offer mental health support. One thing I help my [EL] students do a lot is schedule dentist appointments. None of these responsibilities were part of my original job description, but they've become more official over time.

I've helped with other medical issues as well. I had a[n] [EL] student who was living in an area that was shared by someone who had trafficked her. She had Post Traumatic Stress Disorder and was hospitalized several times for mental health reasons. I helped her move to a shelter [for young adults], where the environment was a lot more stable. She started doing better in school. But in the 2020-2021 school year this student was no longer considered a newcomer to the school, so she was no longer able to work with me, and transitioned to working with a counselor that served the school's population at large. Then COVID-19 forced all students to become remote. Without in-person bilingual support, I am concerned that this student will not graduate.

It's a pretty well-known problem that kids [ELs] are dropping out in high numbers. About 180 [EL] students dropped out in the 2020-2021 school year – half of our EL student population. ELs who drop out are coded by our school's administration as having "transferred out" even though all the teachers and administrators know they're not transferring to a different school. It's a political issue. If affluent families see a high dropout rate at a public school they won't send their kids there.

A common attitude among administrators, and some of my colleagues, is, "when you have kids applying to Yale, why should we waste resources on [EL] kids who will age out or drop out?" Something a lot of my colleagues have said to me is "you can't save them all." ELs have become invisible in a system that is supposed to support them. I want to make sure that there is equity for students. It should not be about "saving" ELs, it's about giving them appropriate access to an education and the resources they need.

I don't believe our school is compliant with state regulations [in regard to ELs]. I've heard the school's director state that because the program wasn't compliant with the state [the New Jersey Bilingual Education Code] she didn't want to show the program to anybody. There are overt examples of non-compliance [with the New Jersey Bilingual Education Code] taking place in the school. During 2020-2021, the school placed ELs who were new to the school in an isolated classroom in the basement of the school. It wasn't until a fight took place between two students that a bilingual aide was brought into this classroom to help the thirty-eight students who had been placed there. Many of the students remarked to this bilingual counselor that the classroom reminded them of a detention center.

What worries me most is that if we have more influxes of [EL or immigrant] students, I think the same thing may happen to them. Our school doesn't have a plan, they're just really reactive. That's how these kids ended up in the basement.

"I'VE HAD STUDENTS SEE THINGS EVEN ADULTS SHOULDN'T SEE"

**NARRATIVE FROM A MIDDLE SCHOOL BILINGUAL EDUCATOR,
LARGE URBAN SOUTHERN NEW JERSEY SCHOOL**

I started at my current job a few months into the COVID-19 pandemic. The expectations of virtual school are night and day for the students [compared to in-person classes]. Many [EL] families were not familiar with Zoom or Google Meets and some did not have access to the Internet. Despite this, all the communication with families [by the school] was being done digitally, and much of it in English.

I had one [EL] student who had been doing really well until this year. But virtual school was really hard for her. She lived with her dad, and he worked during the day, and I think that being home alone for so much time was really hard on her. The school should have given her better support. It is schools' responsibility to give academic support. It should not only be students with stay at home parents who can succeed with virtual learning. I had another [EL] student who went to visit his mom in Puerto Rico and stayed. The school didn't know that until much later, we thought he had just stopped logging in. The school should have, and needs to, create stronger trust with families, so they can communicate about changes in students' lives. The system needs to change. We're seeing that some uninsured families are not able to enroll their students in-person because they haven't received vaccinations. [COVID-19 vaccination is not required to enroll in New Jersey public schools. This statement suggests that this teacher's school may be imposing a nonexistent vaccination requirement.] Health and safety should not be incompatible with equity in education.

There are over 1,000 students enrolled in my school district's bilingual program, and 90% of them speak Spanish. Despite the pandemic, there are a lot of great things about our school's program. For instance, we have a bilingual building where students are taught in their native language. Our school district has also been good about offering individualized plans, called 504 plans, to ELs who need specific accommodations.

The situation here is much better than in the first school where I worked. One very bright student I had there wound up being placed in a special education program because his placement test was given in English. [Assessments to determine eligibility for special education and appropriate programs and services must be “selected and administered so as not to be racially or culturally discriminatory” and “provided and administered in the language and form most likely to yield accurate information,” unless clearly not feasible.⁴⁸]

With more kids coming across the border this year, there are a lot of new students in my class. I had a student who just came from Mexico. He’s very bright, but tested at first-grade level in math. Sometime in September, he crossed the border, and spent most of the past few months moving around or in hiding, so he wasn’t enrolled in school. It was really an eye-opener. All of the parents I’ve worked with want their children to be successful, but it’s hard when they’re moving from town to town trying to find work.

I have students who’ve seen things that even adults shouldn’t see. I had one student who saw her grandmother murdered. She mentioned it to me at the end of the year, like it was normal to her. In my experience, ELs have little or no access to mental health support — we have no Spanish-speaking counselors. It’s hard for students to be open and vulnerable since a third person will have to translate.

"EVERYTHING THAT WAS BETTER WAS IN ENGLISH"

STORIES FROM THE PANDEMIC—AND BEFORE—FROM PARENTS, CAREGIVERS, STUDENTS, AND TEACHERS

The COVID-19 pandemic changed all students' education, as in-person classes largely transitioned to virtual ones. Though many students struggled with this change, it particularly hurt ELs. The loss of in-person support from bilingual aides, a lack of technology assistance for ELs, and lack of mental health support in the face of new stressors and responsibilities all limited ELs' participation in school during the pandemic.

At Spanish-language listening sessions with members of Make the Road New Jersey in June and July 2021, immigrant parents and caregivers, some of whom are parents and caregivers of ELs, noted that the pandemic, including the demands of remote learning, placed severe strains on their families. One parent from an urban school district in northern New Jersey recounted: "I lost my job, and the online classes were very difficult because we didn't know how to use the Internet. My son and my whole family were very stressed. We live in front of the hospital, and we could hear the ambulances every day." While more affluent parents were able to work from home and participate in their child's remote schooling, few parents in this group had that luxury. "When we left to work, my kids were alone," one parent said. "I felt sad seeing my daughter's classmates, children of six years of age, making themselves breakfast alone."

Teachers echoed these concerns. One teacher in a suburban northern New Jersey school district noted that one of her student's parents became one of the first people in the state to get COVID-19: "This kid was in 9th grade dealing with the fact his mom could die." Many ELs were under particularly acute stress given the risks their loved ones faced while serving as frontline workers. A teacher from a small suburban central New Jersey school wrote: "I am concerned about what may be a need for a growth in understanding of the higher risk these families face with COVID-19."

Many parents expressed frustration over remote learning, with one urban northern New Jersey parent commenting that remote learning was like "starting from zero" for her family.

“At the beginning, we only had one computer for three children. The teachers gave them about eighteen absences, and even though we told the teachers [about the computers], they would only say that it was our responsibility,” she recalled. Other parents mentioned that schools’ failure to help students access the Internet hindered them signing on for classes. The northern New Jersey parent noted that “later we saw that the teachers didn’t even interact [with the students], they just gave them more and more homework with nothing interactive, and never offered support to the parents.”

Schools also failed to communicate important information about services to immigrant and EL parents and caregivers in the pandemic. For instance, one teacher realized that her school had not told ELs that Free and Reduced Price Lunch was still available: “Students would tell me they were hungry and had not eaten enough. A lot of parents also didn’t know that the school was giving out food, they just assumed it stopped when everything went virtual because the school district hadn’t communicated otherwise.”

While some parents and caregivers praised their children’s schools, others felt the problems their students faced in the pandemic indicated a broader lack of concern. In general, “lots of clubs and organizations are not offered in Spanish. You lose a lot of opportunities not being English-speaking,” the parent of one EL said. Another expressed a general feeling that at her daughter’s school, ELs were being shortchanged: “Everything that was better was in English.”

As schools tentatively reopen, inadequate communication about COVID guidelines is continuing to hurt immigrants and ELs. Vaccination policies are one looming issue, with ELs, families, and teachers themselves confused regarding what is required. One teacher from a large suburban school in southern New Jersey said, “Many of the students’ [ELs] parents are uninsured, so [they believe] the students cannot get vaccinated.” Though New Jersey schools do not require COVID-19 vaccinations for students, the teacher noted that “[t]his has, and will further become, a problem because students cannot return to school if they’re not vaccinated.” This teacher’s prediction, though grounded in a misunderstanding, has come true in at least one other large suburban southern New Jersey school. A teacher there stated that “new students who were accepted to our school virtually whose parents were uninsured had to remain virtual.”

"A CHILD'S EDUCATION SHOULDN'T BE A BARGAINING CHIP"

NARRATIVE FROM A LONGTIME FORMER BILINGUAL EDUCATOR AND CURRENT BILINGUAL ADMINISTRATOR, MEDIUM-SIZED NORTHERN NEW JERSEY SCHOOL DISTRICT

This past year I felt really burned out. I work as a supervisor of [an EL program]. So much of my job is accountability work. I do really appreciate that jobs like mine exist today, because when I started working as a bilingual teacher in the 1980s, nobody cared about ELs slipping through the cracks. There was no mandatory training in place for bilingual teachers. I'm grateful that this system has changed, but there are still more changes that need to be made.

School districts need to hire administrators that speak the students' native language, especially former bilingual and ESL teachers, and there needs to be more than one per [district] administration. In my case, since I'm the only bilingual administrator within our school district, all EL parents and teachers come to me. I'm happy to talk to them, but our administration would be more cohesive if I wasn't the only person they could bring issues to. Time and time again I see individuals of color and bilingual administrators passed over for positions. This is particularly frustrating when I see it happen in districts that have a sizable EL population, say over 500 students. There's this attitude that "anybody can be an EL specialist or represent ELs in administration." But this isn't true. Why are we passing over administrators who speak Spanish, Portuguese, etc? These skills could go a long way in making an administrator more accessible and thus more conscientious of making informed administrative decisions. All the time, I hear my colleagues say, "your kids [meaning ELs], my kids [meaning general population]." What are we teaching these kids by demonstrating mindsets like that?

Before I started working as a program supervisor, there wasn't a bilingual registrar in my district. Immigrant parents were hesitant about enrollment because they didn't want to provide documentation of where they lived, and my school district refused to admit students until they received all the information they needed. Meanwhile these kids are at home, falling further behind in school. We should admit kids immediately and worry about paperwork second. A child's education shouldn't be a bargaining chip.

I had a lot of trouble making my supervisor understand why it was important that we have a bilingual registrar who understands why providing proof of residence can be scary. There is an explicit section within the New Jersey [Administrative Code] that addresses the importance of registration being accessible to parents of ELs. If a school district is unable or unwilling to hire a bilingual registrar, then they should require their current secretary to attend professional development for registering ELs, so they can offer support instead of fear.

Similarly, when I first moved to my current school district in 2016, they weren't distributing the Home Language Survey, which is a required part of the EL intake procedure in the [Bilingual Education] Code. I told them that they had to distribute the survey by New Jersey law. Once I said this the school agreed to start distributing the survey; however, they ignored the legal requirement that the survey be distributed to all incoming students, and just started distributing it to kids with Spanish last names. [The Home Language Survey assists school districts in identifying ELs and determining the need for ESL or bilingual instruction. By law, the Home Language Survey must be administered for all students upon enrollment.]

We need to properly train educational personnel, so they understand that such a solution is both illegal and racist. Even from some of my ESL teachers, I've heard comments such as "that kid doesn't need ESL, his first language is German." At one point, our school also took a stance against [registering] a group of Central American students, suggesting that these students were actually living in a different school district. While it's true that sometimes students do try to register outside their school district, this is definitely not an issue specific to immigrant students [or those from Central America]. One of the administrators involved in the situation stated, "They don't belong to us." Racialized language and perspectives such as these are deeply entrenched in our educational system. They need to be worked through with further professional development for all teachers, counselors, and administrators who work with ELs.

"ARE WE JUST EXPECTED TO GO BACK TO NORMAL?"

NARRATIVE FROM AN ESL EDUCATOR, SMALL SUBURBAN MIDDLE AND HIGH SCHOOL IN NORTHERN NEW JERSEY

When my school district went remote in March 2020, every child was given a Chromebook to help with the transition to remote learning. The technology department of my school quickly became overwhelmed. Many of the used Chromebooks that had been given out malfunctioned and needed to be replaced, but the school set things up so they could only be swapped out during school hours, a time that the parents of many ELs spent working. Our school also didn't give out enough hot spots, which was hard on my ELs who lived in locations with poor Internet connectivity. A big issue for several of the ELs that I taught was that a brother or sister would also be on the hotspot or WiFi and the system wouldn't be able to handle two or more people, thus creating a dramatic lag and making it difficult for both students to be in school simultaneously.

I had a student transfer [from another New Jersey school] after our school had become entirely remote. At first, he was a really active member of my class. However, once both his parents started working we lost him [he stopped logging into virtual classes]. I came to find out that once his parents had returned to work, he had started taking care of a third-grade brother in addition to being in school. A lot of my students were taking care of younger siblings and grandparents. I'd have [EL] students holding babies on Zoom.

Our guidance counselor only speaks English, so ELs often come to me with challenges. I taught one EL whose mom was one of the first people in New Jersey to get sick with COVID-19. His mom had health issues prior to COVID-19 and got really sick. This student was only in 9th grade, and he was trying to cope with the reality that his mom could die.

Another [EL] student I had was struggling with the process of entering the military, which is difficult for ELs because the test is only in English. While he was studying for the test he found out his dad, who lived abroad and who had abused him, had passed away.

He was also taking care of his grandmother. His mom wasn't around much because she worked abroad as a nurse. That's a lot for a kid to take on. I mentioned to the counselor everything that had happened in this student's life and the counselor noted "let me know if you ever want me to reach out to him." The counselor shouldn't have to ask me "if I want him to reach out," it should go without saying that a young adult experiencing so much in his life should have a system of mental health support that he can rely on. I wanted to be able to refer him to a bilingual counselor, but the school didn't have one.

A lot of us have not had a chance to talk about all of this, to process what it means to have been an ESL or bilingual teacher during a pandemic. There wasn't a rule book, so we were just doing our best to make sure ELs didn't get left behind. Now that we're starting to ramp up to be in person in the fall, I keep expecting an administrator or counselor to reach out and ask how the teachers are doing. But no one has reached out. COVID-19 has been a disruption to ELs' learning community and to teachers' community within schools.

We've had a lot of students' parents die this year, some from COVID-19 and some from other causes. How do these students deal with that? How do we help them deal with that? Are we all just expected to go back to normal and be okay? Taking on the multitude of changing responsibilities that came with virtual learning has been overwhelming.

"WE CAN DO BETTER THAN THAT."

NARRATIVE FROM A RETIRED NORTHERN NEW JERSEY ELEMENTARY AND MIDDLE SCHOOL BILINGUAL AND ESL EDUCATOR

I don't think the success stories of ELs are told enough. In 2008, I had a student come to my fourth grade classroom who spoke almost no English, but his Spanish was wonderful. His family would read the newspaper to him every day to improve his English and educate him on what was happening in the world. Today he works at a major news company as a bilingual journalist, winning a number of Emmys for his reporting on immigration issues. His story was not without its ups and downs. When he entered middle school, he went through a rocky period. His middle school teacher called me because she believed that he had been purposefully testing himself into easy classes. I called his father, who was unaware of the situation, and we worked together to support him. Many students, whether ELs or not, have challenges in their lives, and I think it's so important that schools have support systems in place for these students.

Today, I'm retired from being a teacher. Instead, I help educate other school districts on how to support their ELs. I've seen a lot of good and bad over my career. I think one of the hardest things for me to see was when a school had a mental health support system, but ELs were largely unable to access it because the counselors only spoke English. How can you begin to understand what is best for a student if you don't even speak their language? In the 1980s and 1990s, I taught students who had left El Salvador because of the Civil War. They were living with this trauma and with new challenges — their parents were struggling to find enough work to put food on the table. It is incredibly difficult to understand a kid with trauma unless you speak their language, and our counselors did not. We need to offer students mental health support in their native language, as well as everyday support, like free or reduced lunch programs that are easily accessible.

I have also routinely seen Google Translate being used as a solution to communication barriers. Can you imagine being educated through Google Translate? We can do better than that.

During parent-teacher conferences, monolingual teachers would encourage parents to only speak English to their kids at home. But I believe that you should parent your children in a language they, and you, understand.

Change needs to happen at every level of the education system. Being an administrator doesn't necessarily mean you have the expertise to understand ESL and bilingual programs. One of the best experiences I've had was with an assistant superintendent who asked that before I begin working with his teachers, I do professional development [over the summer] with his administration. The result of this was we [the administrators and I] were able to put systems in place for teachers supporting ELs, that I helped the teachers implement. The school district asked the assistant superintendent when the program [having me do professional development] was going to be completed, and he told them "never, because there is always more to learn." I think that is exactly the right way to think about it.

However, other schools seem stuck in their ways. I worked in a school in northwest New Jersey where the general population was always prioritized over the ELs. The school scheduled the ELs' Language Arts class during a period that overlapped with the band, so ELs were unable to join the band. This finally changed because I kept pushing the school's administration to understand this was unfair. ELs' sole purpose in being in school isn't just to learn English. They should also have the opportunity to play music and join sports, just like all the other students do.

I think one of the hardest parts of doing professional EL development with schools is when teachers come up to me and say, "but it's not in the Code." What they mean is that there are specific accommodations their ELs need, but New Jersey's Bilingual Education Code does not state the accommodations are necessary. The burden to offer things [like bilingual mental health or career counseling] should not fall on the teachers, the Code needs to make it clear these accommodations aren't optional. Teachers shouldn't have to improvise to do right by their ELs.

THE RIGHTS OF ELS AND LIMITED ENGLISH PROFICIENT PARENTS

By law, public schools must take affirmative steps to ensure that EL students can meaningfully participate in educational programs and services and to ensure meaningful communication with Limited English Proficient (LEP) parents.⁴⁹ All EL students are entitled to a free, appropriate public education that provides equal educational opportunities.⁵⁰ The core educational rights of EL students and LEP parents, and school districts' obligations to fulfill those rights, did not change during the COVID-19 pandemic. This resource is designed to help the public understand these legal rights.

Students have the right to be screened and identified for EL status.

The law requires that students between the ages of 3 and 20 be screened and identified as EL students within 30 days of enrollment in school.⁵¹ Screening is conducted by a bilingual, ESL, or other certified teacher and is initiated by a home-language survey to distinguish students who are proficient English speakers from students who must be tested to determine English language proficiency.⁵² If the home-language survey indicates the need for testing, districts administer a state-approved English language proficiency test. Test results plus other criteria⁵³ are used to determine EL identification. Students whose scores on a state-approved test do not indicate English proficiency, and who have at least one other indicator, are identified as EL students.⁵⁴ To identify preschool EL students, schools should use age-appropriate methodologies to determine individual language development needs.⁵⁵

If a district is operating by remote instruction, it must continue to screen and identify EL students within 30 days of enrollment.⁵⁶ If no state-approved language proficiency test (such as the WIDA Remote Screener) is available during remote instruction for formal EL identification, then EL identification may be informal, based on 1) parent and student interviews conducted by phone or virtually and 2) a review of past school records, if available. Upon return to in-person instruction, informally identified students must be formally identified.⁵⁷⁵⁸

Parents must be informed in writing, in English and their native language, within 30 days of their child’s informal or formal EL identification.⁵⁹ The notice must contain information including: why the student was identified as an EL; their current English proficiency and academic levels; the method of instruction to be used and how it will meet the student’s needs; and the expected rate of exiting the EL program.⁶⁰ It must also include a statement explaining that parents of EL students have the right to opt-out of an EL program.⁶¹

District Obligations	Potential Mistakes
<ul style="list-style-type: none"> ■ Develop screening process for English proficiency testing N.J.A.C. 6A:15-1.3(a)(2) ■ Identify EL students using state-approved English proficiency test + other criteria N.J.A.C. 6A:15-1.3(b) ■ Provide timely written notice of EL identification to parents in their native language N.J.A.C. 6A:15-1.13(a) 	<ul style="list-style-type: none"> ■ Failing to administer home language surveys to initiate screening process ■ Failing to use both State-approved test and additional indicators to determine EL classification ■ Failing to provide translated notice of EL identification with all required information and statement about option to opt-out of EL services

EL students have the right to all the courses and support services, including language instruction programming, needed to prepare them to meet state learning standards.

Districts must provide EL students with all legally required courses and support services to prepare them to meet state learning standards for high school graduation.⁶² This includes non-academic courses, additional programs and services to meet EL students’ particular needs, and language instruction programming. The type of language instruction programming that New Jersey school districts are required to provide varies depending on the number of EL students in the district.⁶³

Districts with fewer than 10 EL students are required to provide English Language Services (ELS) designed to improve English language proficiency.⁶⁴ These services are additional to the regular school program and taught by a certified teacher (for example, 90-100 minutes weekly of ELS instruction).

Districts with 10 or more EL students but fewer than 20 EL students in a single language group must provide English as a Second Language (ESL) programs. ESL programs consist of at least one period of instruction every day, taught by a certified ESL teacher.⁶⁵ ESL instruction must be correlated to all content areas taught.⁶⁶

Districts with EL student populations of 20 or more students in a single language group are required to provide full-time bilingual or dual language programs for EL students in that language group or an alternative instructional program such as a bilingual part-time component or high-intensity ESL.⁶⁷ In order to be permitted to offer an alternative program, a district must receive an annual waiver from NJDOE.⁶⁸ In order to be granted a waiver, the district must demonstrate that it would be impractical to provide a full-time bilingual program due to the age range, grade span, and/or geographic location of eligible students.⁶⁹

Districts with state-funded preschool programs must provide systematic support for language acquisition to help EL preschool students acquire English while maintaining their home language within their regularly assigned preschool classroom.⁷⁰

During remote instruction, to the greatest extent possible, districts must ensure that EL teachers and content teachers are able to provide appropriate supports and accommodations to EL students through remote means.⁷¹ Remote EL language instruction services may be provided virtually, online, or via telephone.⁷² Where technology itself poses a barrier or educational materials are not available in an accessible format, EL students must be provided equally effective alternate access to the curriculum or services provided to other students (for example, teacher check-ins or tutorials).⁷³

Paraprofessionals, who usually work in physical classrooms supporting students and teachers, may also provide support in the virtual environment to EL students.⁷⁴ During remote learning due to the COVID-19 pandemic, the State instructed school districts that paraprofessionals could provide the following types of support: pre-record read-alouds and videos; caption prerecorded instructional videos from general education teachers; provide real-time support during virtual sessions; research websites, videos, and links for accessible activities that teachers could incorporate into lessons; provide support for families and students in accessing and participating in remote learning; assist with instruction in online classes; lead small group instruction in a virtual environment; and facilitate the virtual component of synchronous online interactions.⁷⁵

When remote instruction is necessary, districts should prioritize safely returning EL students to in-person settings, because they are a high-need student group better served by in-person instruction.⁷⁶

District Obligations	Potential Mistakes
<ul style="list-style-type: none"> ■ Provide EL students with all required courses and support services to prepare them to meet state standards for graduation N.J.A.C. 6A:15-1.4(a) ■ Provide appropriate language instruction programs <ul style="list-style-type: none"> <input type="checkbox"/> 1-9 ELs: English language services <input type="checkbox"/> 10 or more ELs: ESL program <input type="checkbox"/> 20 or more ELs in one language classification: bilingual education program (or alternative, with waiver) N.J.A.C. 6A:15-1.4(b)-(d) ■ Take all affirmative steps necessary to ensure EL students can meaningfully participate in the educational program 	<ul style="list-style-type: none"> ■ Inadequate provision of language instruction programs (or, for opt-outs, other supports) ■ Recommending that parents decline all or some EL services ■ Failing to provide equitable opportunities to participate in non-academic courses and additional programs and services designed to meet the special needs of EL students N.J.A.C. 6A:15-1.4(e), (g) ■ Failing to provide language supports in English-taught classes

PARENT INVOLVEMENT

New Jersey school districts are required to affirmatively involve the parents of EL students in the school community.⁷⁷ Districts must foster the involvement of parents of EL students in the development and review of language instruction programs and in the dissemination of information between districts and the communities served by these programs.⁷⁸ Districts with bilingual education programs must also establish parent advisory committees, of which the majority of the members must be parents of EL students.⁷⁹

School districts may not exit a student from EL status unless they demonstrate readiness to function successfully in an English-only program or their parent or guardian declines services.

EL students must be assessed annually using a state-approved English language proficiency test to determine their progress in achieving English proficiency goals and their readiness for exiting EL programs.⁸⁰ Districts may not exit a student from EL status unless the student has demonstrated readiness to function successfully in an English-only program.⁸¹ The exit process is initiated by the student's level of English proficiency as measured by a state-established standard on a language proficiency test,⁸² and student readiness is further assessed on the basis of additional indicators.⁸³

Once the review process for exiting an EL student has been completed, the district must notify the parent or guardian of the result by mail.⁸⁴ Parents, guardians, and teaching staff have the right to appeal the placement determination.⁸⁵ Districts must monitor the academic progress of exited EL students for at least two years to ensure, among other things, that they have not been prematurely exited.⁸⁶

Parents of EL students have the right to opt out of an EL program or decline particular EL services.⁸⁷ Parents can decline enrollment in an EL program upon initial identification of the student as an EL,⁸⁸ or can remove a student who is enrolled in an EL program.⁸⁹ If parents choose to do so, they should make the request in writing. If parents opt their children out of an EL program or particular EL services, the children retain their status as EL students and districts remain obligated to take affirmative steps and appropriate action to provide these students access to their educational programs.⁹⁰ To ensure the needs of these students are met, districts must periodically monitor their progress.⁹¹ Additionally, if such a student does not demonstrate appropriate growth in English proficiency or struggles academically due to language differences, districts must inform the student's parents and offer them further opportunities to enroll the student in the EL program or particular EL services.⁹²

If districts are unable to administer a state-approved language proficiency test, as may have been the case during school closures due to the COVID-19 pandemic, they may not exit EL students.⁹³ Under such circumstances, schools should give particular attention to individualized determinations for the instruction and placement of each EL student when in-person schooling resumes.⁹⁴

Furthermore, because EL students' English proficiency may decrease during in-person school closures, districts should closely monitor each EL student to assess the need for additional supports.⁹⁵

District Obligations	Potential Mistakes
<ul style="list-style-type: none"> ■ Assess each EL student annually using state-approved English proficiency test N.J.A.C. 6A:15-1.10(b) ■ Exit students to monolingual English programs when they demonstrate readiness N.J.A.C. 6A:15-1.10(c) ■ Monitor academic progress of exited EL students 20 U.S.C. § 6841(a)(4); N.J.A.C. 6A:15-1.10(e) 	<ul style="list-style-type: none"> ■ Conflating acquisition of Basic Interpersonal Communication Skills (social English) v. Cognitive Academic Language Proficiency (academic English) ■ Failing to assess exit readiness using multiple indicators ■ Failing to monitor exited EL students or to determine need for reenrollment in EL services

Parents and guardians have the right to receive school communications in a language they can understand.

Districts have an obligation to ensure meaningful communication with parents who do not speak English (LEP parents) in a language they can understand.⁹⁶ Even if a child is proficient in English, their parent may be LEP, and districts must provide the LEP parent with language assistance.⁹⁷

In addition to sending written notice of a student's initial identification as an EL and written notice about exit determinations in the parent or guardian's native language,, New Jersey school districts must send progress reports to parents of EL students in the same manner and frequency as those sent to parents of non-EL students, in their native language unless demonstrably infeasible.⁹⁸ In general, schools and districts must adequately notify LEP parents of information about programs, services, or activities that is brought to the attention of English-speaking parents.⁹⁹

During remote instruction, critical information that should be provided via written translation or oral interpretation to LEP parents includes the expectations for parents to pick up or set up new technology, new enrollment protocols, and information on how to support students at home.¹⁰⁰

District Obligations	Potential Mistakes
<ul style="list-style-type: none"> ■ Provide written translations of EL identification notices, exit determinations, and progress reports N.J.A.C. 6A:15-1.10(f), 1.13(a)-(d) ■ Notify LEP parents of all essential information in a language they can understand 	<ul style="list-style-type: none"> ■ Failing to identify all LEP parents, including those with non-EL children ■ Failing to communicate to LEP parents information about programs, services, and activities that is brought to the attention of non-LEP parents ■ Providing poor quality translations or unqualified interpreters

EL students with disabilities have the right to be evaluated for special education and given appropriate programs, services, and accommodations. LEP parents have specific rights in the special education context.

An EL student with a disability may receive both EL services and disability-related services, and, in fact, must receive all services due under relevant law. Assessments to determine eligibility for special education and appropriate programs and services must be “selected and administered so as not to be racially or culturally discriminatory” and “provided and administered in the language and form most likely to yield accurate information,” unless clearly not feasible.¹⁰¹ Districts must ensure that assessments measure the extent of a student’s disability, rather than English language skills.¹⁰² Teachers and other district staff should work together to coordinate special education and EL services.¹⁰³ For example, district staff with expertise in second-language acquisition should be included in the Individualized Education Program (IEP) teams of EL students with disabilities.¹⁰⁴

School districts must provide LEP parents of children with disabilities meaningful access to information and participation in the special education process through timely and appropriate written translation and oral interpretation.¹⁰⁵

Even if schools are operating by remote instruction, they must ensure that EL students with disabilities aged 3 through 21¹⁰⁶ are evaluated, classified, and provided with special education, related services, and appropriate accommodations under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973 and relevant regulations. LEP parents retain their right to participate in the special education process during in-person school closures, including their right to receive written translations of notices and to have an interpreter at meetings.

District Obligations	Potential Mistakes
<ul style="list-style-type: none"> ■ Provide programs/services “designed to meet the special needs of eligible LEP students,” including special education N.J.A.C. 6A:15-1.4(g) ■ Ensure assessments are: <ul style="list-style-type: none"> <input type="checkbox"/> not racially or culturally discriminatory <input type="checkbox"/> administered in the language and form most likely to yield accurate information, unless clearly not feasible <input type="checkbox"/> Measure extent of student’s disability, rather than English language skills N.J.A.C. 6A:14-2.5(b)(1) ■ Provide translation and interpretation services to LEP parents N.J.A.C. 6A:14-2.4(a) 	<ul style="list-style-type: none"> ■ Over- or under-identification of EL students for special education ■ Failing to provide bilingual evaluators/assessments when appropriate ■ Failing to provide special education <u>and</u> language assistance services to eligible students (misconception about “double-dipping”) ■ Delaying special education assessment or services due to EL status ■ Failing to provide required translations or providing unqualified interpreters

School districts cannot deny students a free public education based on immigration status.

Under both state and federal law, school districts are obligated “to provide equal education opportunities to students regardless of their immigration status.”¹⁰⁷ In 1982, the United States Supreme Court ruled in Plyler v. Doe that states, and therefore school districts, cannot deny students a free public education based on their immigration status.¹⁰⁸ The Court held that such a denial targeting “a discrete group of innocent children” was unconstitutional because it violated the Equal Protection Clause of the Fourteenth Amendment.¹⁰⁹

New Jersey law specifically states that “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... shall be enrolled without regard to, or inquiry concerning, immigration status.”¹¹⁰ Furthermore, school districts may not condition enrollment upon the receipt of specific information, including documentation relating to citizenship, immigration status, or social security numbers.¹¹¹ While families may voluntarily provide certain information or documentation and school districts may consider it for enrollment purposes (consistent with applicable laws), school districts may not, directly or indirectly, require or request such information as an actual or implied condition of enrollment.¹¹² School districts are also prohibited from requiring students to disclose or document their immigration status, making inquiries of students or parents that may expose their undocumented status, or engaging in any practices that “chill” or hinder the right of access to public schools.¹¹³ Even if enrollment information is incomplete, unclear, or questionable, enrollment must take place immediately and must continue pending the outcome of a timely appeal of a determination of ineligibility.¹¹⁴

Some EL students are “newcomer” students with interrupted formal education (SIFE students), meaning they have experienced disruptions in their education in their native countries and/or the United States, and/or are unfamiliar with the culture of schooling.¹¹⁵ To meet the needs of SIFE students, some New Jersey school districts establish comprehensive alternative education programs designed to address the individual learning, behavior, and health needs of students whose needs are not adequately met in general education programs.¹¹⁶ State requirements for such programs include maximum student-teacher ratios, an Individualized Program Plan for each student, appropriately certified staff, and comprehensive support services.¹¹⁷

However, districts operating such alternative education programs should take particular care to avoid unnecessary segregation of SIFE students.¹¹⁸ These programs should be voluntary and of limited duration, generally one year.¹¹⁹ Additionally, SIFE students should be scheduled for nonacademic subjects, lunchtime, and recess with non-EL students; encouraged to participate in integrated after-school activities; and have their English proficiency evaluated regularly to allow for appropriate transitions out of the alternative education program throughout the academic year.¹²⁰ Although some SIFE students, especially in the higher grades, may be below grade level in some or all subjects when they enter a school district, they must have the opportunity to meet grade-level standards within a reasonable period of time and districts should ensure that they do not use watered-down curriculum or instructional content.¹²¹

The education program offered should be age-appropriate.¹²² For example, “it would be inappropriate for a district to place high school-aged SIFE students in middle or elementary school campus programs because this would not permit SIFE students to meet high school grade-level standards and graduation requirements within a reasonable amount of time and the placements would not be age appropriate.”¹²³

Federal Immigration and Customs Enforcement (ICE) policy does not allow for immigration enforcement actions at or focused on “sensitive locations,” including schools,¹²⁴ except in very limited circumstances.¹²⁵ There have been concerns about immigration enforcement actions targeting parents near schools.¹²⁶ In response to fears about immigration enforcement activity, as well as increased harassment, intimidation, and bullying based on characteristics such as immigration status in recent years, some New Jersey school districts passed resolutions affirming their efforts to provide a safe and welcoming environment for immigrant students and families.¹²⁷

RECOMMENDATIONS

This report, the survey that informs it, and its recommendations for change are a collaborative effort by New Jersey Teachers of English to Speakers of Other Languages/New Jersey Bilingual Educators (NJTESOL/NJBE), the New Jersey Consortium for Immigrant Children (NJCIC), and Education Law Center (ELC).

These recommendations capture the suggestions of experienced educators and legal and policy experts. They reflect changes that are needed to protect the legal rights of ELs and their families, and to ensure that all ELs in New Jersey have access to a high quality education that provides all the resources and opportunities needed for success. It is important to note that some of the recommendations we provide below are reflected in federal guidance on effectuating the legal rights of EL students,¹²⁸ yet do not currently exist in the New Jersey Administrative Code for Bilingual Education, N.J.A.C. 6A:15.¹²⁹ This makes the implementation of these recommendations all the more urgent, as they seek to remedy a lack of alignment by NJDOE with federal policies that ensure ELs and their families receive the educational services and opportunities to which they are legally entitled.

Furthermore, throughout this report we have chosen, when necessary for clarity, to use the language of the NJDOE and specifically the Bilingual Education Code (i.e., English Language Learner or English Learner (EL), Limited English Proficient (LEP), etc.) However, we strongly encourage the NJDOE to revisit its language and definitions to more closely align with current educational research that advocates for translanguaging approaches and asset-based perspectives.¹³⁰ This is essential for countering deficit perspectives that too frequently exist in classrooms and serve to exacerbate inequitable outcomes for emerging bilinguals/multilingual learners and their families. As collaborators on this report, NJTESOL/NJBE, NJCIC, and ELC are committed to the creation of equitable educational spaces that promote multilingualism, encourage the use of students' and families' full linguistic repertoires, and honor, respect, and sustain multilingual learners' and their families' cultural and linguistic backgrounds, experiences, and knowledge.

Key Recommendations for NJDOE, Legislators, and School Districts

- Develop and institute a formal and transparent compliance and accountability process to ensure that every school district implements the requirements that are already part of the New Jersey Bilingual Education Code. This process must engage multiple stakeholders (e.g., NJDOE staff in the Bilingual Office and Division of Academics and Performance, educators, parents and caregivers, statewide and local advocacy groups, and community members) who have an interest in the Code's proper implementation. Demonstration of compliance must include a robust evaluation of districts' required Three-Year Plans, not only when first submitted to and approved by NJDOE, but also to determine fidelity of implementation and effectiveness in serving the district's EL population. This could include a public report on the plan's effectiveness (midway and at the end of the Three-Year Plan), additional points of evaluation during Quality Single Accountability Continuum (QSAC) monitoring, and/or a letter of determination addressing full implementation of the Bilingual Education Code as presented in the Three-Year Plan. As this report demonstrates, without proper mechanisms in place to ensure compliance, ELs and their families will continue to be underserved by districts that are not fulfilling their legal obligations. (Addition to N.J.A.C. 6A:15-1.6(b).)
- Establish a "complaint investigation" system for violations of laws protecting ELs, comparable to that which exists for special education at N.J.A.C. 6A:14-9.2. Such a complaint process should allow parents and other stakeholders to bring to NJDOE's attention violations of the Bilingual Education Code and other laws protecting the rights of EL students, and require NJDOE to investigate the complaint and issue a corrective action plan if violations are found. This process would augment the proactive NJDOE monitoring and evaluation procedures outlined in the previous recommendation. (Addition to N.J.A.C. 6A:15-1.6, or section added to 6A:15.)
- Change language throughout NJDOE documents used at all levels (administrative code, EL entry and exit documents, etc.) so that it more closely aligns with current educational research and asset-based perspectives. Leading organizations (TESOL International), consortiums (WIDA), and educational researchers (for example, Ofelia García, Nelson Flores, CUNY-NYSIEB) in language education must inform the perspectives, language, and policies of NJDOE.

Training should be required for all NJDOE staff in all academic offices to understand the important rationale behind this language change. (Modifications to N.J.A.C. 6A:15 and other existing NJDOE Code sections, documents, and webpages.)

- Establish a clear and comprehensive definition of language accommodations, including first and target language supports that provide access to content concepts. These include, but are not limited to: translation tools, visuals, dictionaries/glossaries, summaries, partner work, word banks, and teacher talk. Language accommodations involve communicating in ways ELs currently understand while sequencing and scaffolding instruction to foster the learning of grade-level content. As ELs acquire English, the types of linguistic accommodations change, and the need for particular accommodations lessens. (Addition to N.J.A.C. 6A:15-1.2 and 6A:15-1.4(c).)
- Require language accommodations, including but not limited to language objectives and strategies, in every classroom where ELs are students, in order to provide access to grade-level content as legally required. (Addition to N.J.A.C. 6A:15-1.4(c).)
- Facilitate effective delivery of special education, related services, and accommodations for ELs with disabilities.¹³¹ ELs with disabilities are entitled to full implementation of their Individualized Education Programs (IEPs), and their IEPs must include all programs, services, and accommodations necessary to ensure a free appropriate public education under special education law. In order to effectuate these rights, there should be required inclusion of a certified ESL/Bilingual teacher as part of the IEP team, as well as in all meetings for ELs with IEPs.¹³²The IEP for an EL must include a plan to address the English language instructional needs of the student through consultation with a specialist in second language acquisition, such as a bilingual/ESL certified teacher. (Addition to N.J.A.C. 6A:14 and/or 6A:15.)
- Require, as part of districts' Three-Year Plans, EL-focused professional development for all in-service teachers and teacher candidates, all supervisors and administrators who evaluate these teachers, and all staff members, as ELs are the responsibility of all teachers and staff. Professional development must be based on current educational research and asset-based perspectives and include training on interactive, effective implementation of language accommodations. (Modification to N.J.A.C. 6A:15-1.8.)

- **Help students and families access technology and Internet services with training that is accessible, linguistically and logistically.** As part of supportive services for ELs and in alignment with federal law, ELs and their families must be able to meaningfully participate equally and fully in all curricular and extracurricular programs.¹³³ This includes access to technology used during and after the COVID-19 pandemic. (Addition to N.J.A.C. 6A:15-1.7.)
- **Provide essential information and communications from the NJDOE and school districts in a language that LEP parents and caregivers understand and a format that is accessible.** In alignment with federal law and guidance, NJDOE and New Jersey school districts must ensure meaningful communication with parents in a language they can understand.¹³⁴ Information about programs, services, and activities that must be provided in parents' native languages includes information regarding language assistance programs, special education and related services, IEP meetings, grievance procedures, notices of nondiscrimination, student discipline policies and procedures, registration and enrollment, report cards, requests for parent permission for student participation in district or school activities, parent-teacher conferences, parent handbooks, gifted and talented programs, magnet and charter schools, and any other school and program choice options.¹³⁵ In addition, during health emergencies, schools must provide information on school opening/closing and health and safety protocols and procedures in an accessible manner. NJDOE should provide statewide translation and interpretation services. (Addition to N.J.A.C. 6A:15-1.13.)
- **Clearly articulate and communicate a pathway to graduation for ELs.** This must include correct translation and awarding of credits from non-U.S. transcripts; opportunity to gain credits through an Individualized Student Learning Opportunity (see N.J.A.C. 6A:8-5.1(a)2); appropriate placement in requisite classes; and communication of attendance and credit recovery policies to students, parents, and guardians. (Addition to N.J.A.C. 6A:15-1.11.)
- **Offer linguistically and culturally appropriate mental health and counseling services for ELs.** ELs must receive counseling, tutoring, and career guidance from bilingual personnel trained to provide mental health and counseling services. If districts cannot adequately staff bilingual mental health professionals, they must fulfill their obligation to students and families by contracting these positions outside of the district. (Modification to N.J.A.C. 6A:15-1.7(b).)

- Allocate funds for career pathways and recruitment of bilingual and/or Black, Indigenous, and people of color (BIPOC) educators, mental health professionals, counselors, and administrators who are underrepresented in the New Jersey PK - 12 educational system. NJDOE must invest in the recruitment and training of diverse education professionals who reflect the racial, ethnic, and linguistic demographics of our New Jersey student population.
- Create clear pathways for ELs to achieve the Seal of Biliteracy. By clarifying these pathways, NJDOE can celebrate, affirm, sustain, and offer academic recognition for ELs' full linguistic repertoire.

MODEL RESOLUTION ON THE RIGHTS OF ENGLISH LEARNERS

We have included this Model Resolution to encourage school boards across New Jersey to commit to equitable education for ELs by passing resolutions affirming ELs' rights and schools' obligations.

Model Resolution

Whereas, it is the right of every child, regardless of national origin, home language, or citizenship status, to access a free public K-12 education;

Whereas, to make good on this right to a free and appropriate public education, federal law requires school districts to take affirmative steps to ensure that English Learner (EL) students can meaningfully participate in the educational program;

Whereas, in addition to federal laws governing the obligations of state and local education agencies vis-à-vis EL students, New Jersey has enacted statutes, N.J.S.A. 18A:35-15 to 26, and regulations, N.J.A.C. 6A:15, to protect and promote these students' rights;

Whereas, for ELs, effectuating these rights means providing regular language instruction programming as well as accommodations in the child's home language, with personalized attention to each student;

Whereas, the COVID-19 pandemic has exacerbated existing racial, immigration status-related, and socioeconomic inequalities in New Jersey public schools, and may have diminished the quality of instruction many ELs received despite the special needs of this population;

Whereas, this School Board celebrates the language skills EL students and their families bring to school as valuable assets to their education, and is committed to creating a supportive and culturally affirming atmosphere for all students, regardless of national origin, home language, or citizenship status;

THEREFORE, BE IT RESOLVED THAT:

1. The school district shall implement policies to support every student, regardless of national origin, home language, or citizenship status.
2. These policies shall include the measures described below. The school district shall implement these policies regardless of whether the school is operating in-person, fully remote, or in hybrid learning.
3. The school district reaffirms its obligation and commits to ensuring that EL students have equal opportunities to meaningfully participate, including through nondiscriminatory access and language instruction and accommodation, in all curricular and extracurricular activities. These equal opportunities for meaningful participation apply to all courses necessary to meet the New Jersey Student Learning Standards for graduation and all additional programs and services designed to meet the special needs of eligible students.
4. The school district reaffirms its obligation and commits to completing the process of screening all students, identifying EL students, and providing written notice to their parents or caregivers within 30 days of enrollment.
5. The school district's obligation to identify and serve EL students does not negate its obligation to evaluate students for disabilities and provide special education and related services or accommodations. The school district reaffirms its obligation and commits to providing each EL student with a disability access to both the EL and disability-related services to which the student is entitled by law.
6. The school district reaffirms its obligation and commits to providing EL students with the level of language instruction programming required by law in New Jersey under N.J.A.C. 6A:15-1.4.
7. The school district reaffirms its obligation and commits to exiting an EL student from EL programming only if (1) the student has demonstrated proficiency on a state-approved language proficiency test AND additional criteria specified in N.J.A.C. 6A:15-1.10(c) indicate readiness OR (2) if the child's parent or caregiver declines services.

8. When the school district is operating in remote or hybrid learning, EL students shall receive priority for in-person instruction, consistent with New Jersey Department of Education guidance.

9. The school district commits to ensuring that all teachers who provide instruction to ELs, all supervisors and administrators who evaluate teachers who provide instruction to ELs, and all staff members who provide services to ELs have access to relevant, linguistically and culturally sustaining professional development opportunities.

10. The school district commits to recruiting bilingual and/or Black, Indigenous, and people of color educators, mental health professionals, counselors, and administrators, who are currently underrepresented in the New Jersey PK-12 educational system, in order to ensure that the racial, ethnic, and linguistic demographics of New Jersey's diverse student population are reflected in the school workforce.

11. The school district reaffirms its obligation and commits to ensuring that parents and caregivers whose primary language is not English receive communications in a language they understand about any program, service, or activity called to the attention of parents who are proficient in English. The district reaffirms its obligation and commits to providing appropriate translation and interpretation services to parents and caregivers of both EL and non-EL students who need those services.

12. The school district reaffirms its obligation and commits to fostering the involvement of parents of ELs in the development and review of EL programs and in the dissemination of information between districts and the communities served by these programs. If the school district operates a bilingual education program, or does so in the future, it reaffirms its obligation and commits to establishing a parent advisory committee of which the majority of the members must be parents of EL students, as required by N.J.A.C. 6A:15-1.15(b).

13. The school district reaffirms its obligation and commits to avoiding any practices that have the effect of chilling enrollment by undocumented students, and reaffirms its obligation to refrain from requesting immigration-related documentation in order to allow a child to enroll or stay in school (with the limited exception of students who are applying for F-1 visas to study in the United States).

The district reaffirms its obligation to give students, parents, and caregivers flexibility in the type of documentation they can provide to enroll or stay in school by complying with N.J.A.C. 6A:22-3.4.

14. The school district commits to following Fair and Welcoming principles to minimize the risk that participation in school will bring families into contact with Immigration and Customs Enforcement (ICE). These principles include prohibiting ICE agents from entering school grounds or accessing school records unless absolutely required by law.

15. The school district commits to devising and implementing affirmative steps to find and engage EL students who lost contact with district schools during the pandemic. Of particular concern to the district are very young students, students who lacked access to remote learning or the Internet, and older students who lost engagement and are at risk of dropping out.

16. The Superintendent shall report back on compliance with this Resolution to the Board at its next meeting.

RESOLVED this ___ day of ___, 2021.

ENDNOTES

1. U.S. Dep't of Just., Justice Department Settles with Newark Public Schools to Protect English Learner Students (Sept. 1, 2021), <https://www.justice.gov/opa/pr/justice-department-settles-newark-public-schools-protect-english-learner-students>.
2. New Jersey Public Schools Fact Sheet, N.J. Dep't of Educ.: Off. Site for the State of N.J. (2021), www.nj.gov/education/doedata/fact.shtml. (For PDF version, see <https://www2.ed.gov/policy/rights/guid/unaccompanied-children.pdf>).
3. English learners and immigrant students are overlapping groups, but some English learners are not immigrants, and some immigrants are not English learners.
4. U.S. Dep't of Educ., Educational Services for Immigration Children and Those Recently Arrived to the United States (2014), <https://www2.ed.gov/policy/rights/guid/unaccompanied-children.html>; see also Our Nation's English Learners, U.S. Dep't of Educ., <https://www2.ed.gov/datastory/el-characteristics/index.html> (last visited Sept. 2021).
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48. N.J. Admin. Code § 6A: 14-2.5(b).

49. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000(d); Equal Educational Opportunities Act of 1974, 20 U.S.C. §1701; see also U.S. Dep't of Just. & U.S. Dep't of Educ., Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs, OCR-00086 (2015), <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-el-students-201501.pdf>.

50. N.J. Admin. Code § 6A:15-1.1(a)(1), (3); § 6A:15-1.2.

51. Every Student Succeeds Act, Pub. L. No. 114-95, § 3102(b)(1)(A), 129 Stat. 1802 (2015); N.J. Admin. Code § 6A:15-1.13(a).

52. N.J. Admin. Code § 6A:15-1.13(a)(2).

53. N.J. Admin. Code § 6A:15-1.3(b). In addition to testing, schools assess the level of reading in English, review the previous academic performance of students, including their performance on standardized tests in English, and review the input of teaching staff members responsible for the educational program for EL students.

54. Id.

55. Id.

56. U.S. Dep't Of Educ., Fact Sheet: Providing Services to English Learners During the COVID-19 Outbreak (May 18, 2020), <https://www2.ed.gov/documents/coronavirus/covid-19-el-factsheet.pdf>.

57. Peggy McDonald, Assistant Commissioner, Division of Student Services, Identification, Provisional Screener and Parent Notification of ELLs during COVID-19: Fall 2020 Update, N.J. Dep't of Educ. (Aug. 7, 2020), <https://www.nj.gov/education/broadcasts/2020/aug/7/Identification%20Provisional%20Screener%20and%20Parent%20Notification%20of%20ELLs%20during%20COVID-19.pdf>.

58. Id.

59. N.J. Admin. Code § 6A:15-1.13(a).

60. Id.

61. Id.

62. See N.J. Admin. Code § 6A:15-1.4.

63. Id.

64. N.J. Admin. Code § 6A:15-1.4(b).

65. N.J. Admin. Code § 6A:15-1.2, 1.9(b).

66. N.J. Admin. Code § 6A:15-1.4(c).
67. N.J. Admin. Code § 6A:15-1.4(d).
68. N.J. Admin. Code § 6A:15-1.5.
69. Id.
70. N.J. Admin. Code § 6A:13A-5.1(a)(1); see also N.J. Dep't of Educ., Preschool Program Implementation Guidelines, at 11 & 35-42 (2015), <https://www.nj.gov/education/ece/guide/impguidelines.pdf> (describing appropriate instructional programs for EL preschool students).
71. U.S. Dep't of Educ., supra note 8, at 5.
72. Id. at 3.
73. Id. at 4-5.
74. N.J. Dep't of Educ., The Road Back: Restart and Recovery Plan for Education, at 57-8 (June 2020), <https://www.nj.gov/education/reopening/NJDOETheRoadBack.pdf>.
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76. See id. at 13.
77. N.J. Admin. Code § 6A: 15-1.15.
78. N.J. Admin. Code § 6A: 15-1.15(a).
79. N.J. Admin. Code § 6A: 15-1.15(b).
78. Id.
79. N.J. Admin. Code § 6A:15-1.10 (c).
80. There is a limited exception for some EL students with disabilities. See 34 C.F.R. § 200.6(h)(4)(ii).
81. N.J. Admin. Code § 6A:15-1.10 (c) (providing that readiness must be assessed based on additional indicators including, at a minimum: classroom performance; reading level in English; the judgment of the teaching staff member(s) responsible for the student's educational program; and performance on achievement tests in English).
82. N.J. Admin. Code § 6A:15-1.10(f).
83. Id.

84. U.S. Dep't of Just. & U.S. Dep't of Educ., Dear Colleague Letter: English Learner Students and Limited English Proficient Parents, OCR-00085 (Jan. 7, 2015), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>. (citing 20 U.S.C. § 6841(a) (4), part of Title III of the Elementary and Secondary Education Act); see also N.J. Admin. Code § 6A:15-1.10(e).
85. Id.
86. N.J. Admin. Code § 6A:15-1:13(a).
87. N.J. Admin. Code § 6A:15-1:10(d).
88. U.S. Dep't of Just. & U.S. Dep't of Educ., supra note 93, at 30-31.
89. Id.
90. Id.
91. See U.S. Dep't of Educ., supra note 63, at 8.
92. Id.
93. Id.
94. U.S. Dep't of Just. & U.S. Dep't of Educ., supra note 93, at 37.
95. U.S. Dep't of Just. & U.S. Dep't of Educ., Information for Limited English Proficient (LEP) Parents and Guardians and for Schools and School Districts that Communicate with Them, OCR-00087 (2015), <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-lep-parents-201501.pdf>.
96. N.J. Admin. Code § 6A:15-1.13(b).
97. U.S. Dep't of Just. & U.S. Dep't of Educ., supra note 93, at 37-38. (“[T]his essential information includes but is not limited to information regarding: language assistance programs, special education and related services, IEP meetings, grievance procedures, notices of nondiscrimination, student discipline policies and procedures, registration and enrollment, report cards, requests for parent permission for student participation in district or school activities, parent-teacher conferences, parent handbooks, gifted and talented programs, magnet and charter schools, and any other school and program choice options.”).
98. U.S. Dep't of Educ., supra note 63, at 9.
99. N.J. Admin. Code § 6A: 14-2.5(b).
100. Id.

101. See New Jersey Department of Education Offices of Special Education and Title I English Language Learners (ELLs) and Special Education Question and Answer Document, N.J. Dep't of Educ., <https://www.state.nj.us/education/bilingual/news/FAQse.htm> (last visited July 20, 2021).

102. Id.

103. See New Jersey Department of Education Offices of Special Education and Title I English Language Learners (ELLs) and Special Education Question and Answer Document, N.J. Dep't of Educ., <https://www.state.nj.us/education/bilingual/news/FAQse.htm> (last visited July 20, 2021).

104. Id.

105. See N.J. Admin. Code § 6A:14-2.4(a). For a more detailed overview of LEP parents' rights to interpretation and translation in the special education process, see Education Law Center's information sheet available at <https://edlawcenter.org/assets/files/pdfs/English%20Learners/Special%20Education%20Interpretation%20and%20Translation%20Information%20Sheet%207.6.21.pdf>.

106. 20 U.S.C. §§ 1412(a)(3)(A), 1412(a)(10)(A)(ii)(I); 34 C.F.R. §§ 300.111(a), 300.131(a); N.J. Admin. Code § 6A:14-3.3. Also note that students with disabilities are entitled under federal law to educational services through the school year in which they turn 21 if they have not yet qualified for high school graduation. See N.J. Admin. Code § 6A:14-1.1(d), 1.3.

107. Statement on the Enrollment and Continued Education of Undocumented Students, N.J. Dep't of Educ. (2017), <https://www.state.nj.us/education/bilingual/policy/undocumented.htm> (citing *Plyler v. Doe*, 457 U.S. 202 (1982)); see also Enrollment of Immigrant Students and/or Undocumented Students, N.J. Dep't of Educ., <https://www.state.nj.us/education/bilingual/policy/immenrol.htm> (last visited July 23, 2021).

108. *Plyler v. Doe*, 457 U.S. 202.

109. *Id.* at 230. (“If the State is to deny a discrete group of innocent children the free public education that it offers to other children residing within its borders, that denial must be justified by a showing that it furthers some substantial state interest. No such showing was made here.”).

110. N.J. Admin. Code § 6A:22-3.3(b). (Note, there is a limited exception for students who have obtained or are seeking F-1 visas.)

111. N.J. Admin. Code § 6A:22-3.4(d).

112. N.J. Admin. Code § 6A:22-3.4(e).

113. Enrollment of Immigrant Students and/or Undocumented Students, N.J. Dep’t of Educ.,

<https://www.state.nj.us/education/bilingual/policy/immenrol.htm> (last visited July 23, 2021).

114. N.J. Admin. Code § 6A:22-4.1(c). (Note, however, that the enrollment applicant shall be notified that the student will be removed from the school district if defects in the enrollment application are not corrected, or an appeal is not filed, in accordance with the subsequent notice to be provided pursuant to N.J. Admin. Code § 6A:22-4.2.)

115. U.S. Dep’t Of Educ., Newcomer Toolkit (Sept. 2017),

<https://www2.ed.gov/about/offices/list/oela/newcomers-toolkit/ncomertoolkit.pdf>.

116. Alternative Programs for SIFEs, N.J. Dep’t of Educ.,

<https://nj.gov/education/bilingual/resources/sife.htm> (last visited July 27, 2021). Such alternative education programs require approval by individual district boards of education per N.J. Admin. Code § 6A:16-9.1(a).

117. *Id.*

118. *Id.* (citing U.S. Dep’t of Just. & U.S. Dep’t of Educ., *supra* note 93, at 23).

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. FAQs: Sensitive Locations and Courthouse Arrests, U.S. Immigr. & Customs Enf't, <https://www.ice.gov/about-ice/ero/sensitive-loc> (last visited July 23, 2021). Schools include “known and licensed daycares, pre-schools and other early learning programs; primary schools; secondary schools; post-secondary schools up to and including colleges and universities; as well as scholastic or education-related activities or events, and school bus stops that are marked and/or known to the officer, during periods when school children are present at the stop.”
125. See *id.*
126. See Letter from Gurbir S. Grewal, N.J. Att’y Gen., to Kirstjen M. Nielsen, Sec’y of Homeland Sec. (Jan. 25, 2018), https://nj.gov/oag/newsreleases18/Letter-to-DHS_Jan-25-2018.pdf (expressing concern about ICE arrest of Indonesian nationals who had just dropped off children at school); see also Moriah Balingit, Can Educators Call ICE on Students? Betsy DeVos Finally Answers, Wash. Post (June 5, 2018), https://www.washingtonpost.com/news/education/wp/2018/06/05/can-educators-callice-on-students-betsy-devos-finally-answers/?noredirect=on&utm_term=.ad66514bb559.
127. See, e.g., Karen Yi, Newark Public Schools to be ‘Sanctuaries’ for Immigrant Students, NJ.com (Mar. 1, 2017), https://www.nj.com/essex/2017/03/newark_schools_to_be_sanctuaries_for_immigrant_stu.html.
128. U.S. Dep’t of Just. & U.S. Dep’t of Educ., *supra* note 93; U.S. Dep’t of Just. & U.S. Dep’t of Educ., *supra* note 56.
129. N.J. Admin. Code § 6A:15.
130. Translanguaging with Multilingual Students: Learning from Classroom Moments (Ofelia García & Tatyana Kleyn eds., 2016); Funds of Knowledge: Theorizing Practices in Households, Communities, and Classrooms (Norma González, Luis C. Moll & Cathy Amanti eds., 2006).
131. Individuals with Disabilities Education Act, <https://sites.ed.gov/idea/> (last visited July 21, 2021).

132. N.J. Dep't of Educ., English Language Learner Entry and Exit (May 2021),
<https://www.nj.gov>

[/education/bilingual/NJ%20ELL%20Entry%20and%20Exit_v5_May_2021.pdf](https://www.nj.gov/education/bilingual/NJ%20ELL%20Entry%20and%20Exit_v5_May_2021.pdf).

133. U.S. Dep't of Just. & U.S. Dep't of Educ., *supra* note 56.

134. Exec. Order 13,166, 3 C.F.R. 13166 (August 11, 2000),

<https://www.justice.gov/crt/>

executive-order-13166. This Executive Order is titled Improving Access to Services for Persons with Limited English Proficiency; U.S. Dep't of Just. & U.S. Dep't of Educ., *supra* note 93.

135. Jessica Levin, Education Law Center, Testimony to New Jersey State Board of Education on Re-adoption of N.J. Admin. Code § 6A:15, Bilingual Education.

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