



Statewide Parent  
Advocacy Network

Empowering families,  
professionals, and others  
interested in the well-being  
and education of children  
and youth

*In this fact sheet:*

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**{ and more }**

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## SPAN FACT SHEET

*Immigrant and Limited English Proficient (LEP) children and their families face many challenges in accessing a quality education, including appropriate language access services. Federal and state laws provide protections that can help address these challenges and improve outcomes. .*

## The Rights of Immigrant and Limited English Proficient Parents and Students in the Education Process

The purpose of this fact sheet is to educate you as an immigrant parent about state and federal laws guaranteeing your child's access to public school services and your right to information and meetings in your home language. As the child of immigrant parents, your child may face challenges in school stemming from cultural and language differences. Immigrant children have a higher risk of dropping out of school. One of the best ways to ensure your child receives a quality education is for you to get involved and to know your rights and the rights of your child.

### **Your Child's Right to an Education:**

The New Jersey Constitution provides the right to an education to every resident child. The US Supreme Court decision in Plyler v. Doe guarantees that right to every immigrant child even if they or their families do not have proper documentation. Your child's school may not require proof of citizenship or legal residence to enroll in school or access education services. Schools may not ask about your or your child's immigration status. You cannot be required to give your or your child's social security number. And your child is entitled to receive equal services such as free or reduced breakfast or lunch, transportation, education and support services, including special education services, and participation in after-school and other activities.

### **Your and Your Child's Right to Language Access:**

Title VI of the Civil Rights Act of 1964 prohibits discrimination against any person in the United States because of their national origin by any program that receives federal financial assistance, such as public schools. In Lau v. Nicols, the US Supreme Court held that this includes discrimination on the basis of a person's inability to speak, read, write, or understand English. They also said that schools must take affirmative steps to ensure that children with limited English proficiency (LEP), also known as English Language Learners (ELL), are provided with the same quality of education as all other students. Presidential Executive Order 13166 requires that entities, such as schools, that receive assistance from the federal government must take reasonable steps to ensure that LEP persons have meaningful access to their programs, services, and information.

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This means that schools must provide information to you, and hold meetings with you, in your language, if you do not understand English well enough to be an informed parent. You cannot be charged for the cost of services required to provide you with language access. The New Jersey Law Against Discrimination (LAD) contains these same protections.

### **Your Child's Right to Bilingual or English as a Second Language Services & Your Right to Participate:**

New Jersey's Bilingual Education Code requires districts to identify children who may be LEP/ELL; provide written notice in your language about your child's identification as LEP/ELL; and provide bilingual education or English as a Second Language education services to all eligible children, depending on how many children in that district speak each non-English language. You must be informed of the method of instruction, how the program will meet your child's educational strengths and needs, and how the program will help your child learn English and achieve academic standards as well as your child's IEP objectives if they have a disability. Progress reports about your child who is enrolled in the district's bilingual or ESL program must also be written in your language unless this would place an "unreasonable burden" on the district. You have the right to decline bilingual services for your child, or remove your child from the bilingual program. If your district has a bilingual education program, it must also have a bilingual parent advisory committee on bilingual education with a majority LEP parent members.

### **Your Child's Right to Special Education Services & Your Right to Participate:**

Under the Individuals with Disabilities Education Act (IDEA) and the New Jersey Special Education Code, your child's school must communicate with you in your native language both orally and in writing, so that you understand the contents of notices as well as the results of your child's evaluation and your child's Individualized Education Program (IEP). Meetings must also be held in your language so that you can be an active, informed participant. The requirement for parents to give informed consent for evaluations and for the initial IEP requires written information to be translated and oral information to be interpreted into your language. The evaluations that are completed to determine if your child has a disability and their strengths and needs may not discriminate against your child based on race, ethnicity or language, and your child should not be found eligible for special education if the reason for their academic difficulty is language. Evaluations must be conducted in the language most likely to yield needed, accurate information. If your child is LEP/ELL and has a disability, s/he should receive bilingual special education services.

#### **Remember:**

The best way to ensure that your immigrant and/or LEP/ELL child receives a quality education is to be informed and get involved! For assistance, contact the Statewide Parent Advocacy Network at 800-654-7726.

The reauthorized Elementary and Secondary Education Act (ESEA), known as the Every Student Succeeds Act (ESSA), requires states to establish statewide exit and entrance procedures for English Language Learners (ELLs); ensure that ELLs are provided with equal opportunities to develop the same conceptual understandings, content area practices, and uses of language needed for college- and career-readiness, and additional supports to ELL students with differing educational backgrounds, strengths and needs; and monitor and measure ELL success. The Individuals with Disabilities Education Act (IDEA) provides additional protections for ELLs, including ensuring that students are not identified as having disabilities when their challenges are based on limited English proficiency or other language/cultural barriers, and mandating language access for both students and their families.

Federal ESSA guidance governing students with limited English proficiency can be found at <https://www2.ed.gov/policy/elsec/leg/essa/essatitleiiiguideenglishlearners92016.pdf>. Federal regulations governing LEP students and special education can be found at §300.27 (definition of "limited English proficient"); §300.173 (the state must have policies and procedure designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities); §300.304 (evaluations must "not be discriminatory on a racial or cultural basis, and must provided and administrated in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer"); §300.322 (IEP teams must consider the language access and communication needs of the child), and §300.300, 300.503, (parental procedural safeguards including the right to have written information and meetings in the parent's language or mode of communication).



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