



NJPSAFE

— LEGAL ONE —

ELL Summit:
Legal and Policy Panel Discussion

May 2, 2018

Disclaimer

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





Topics to be Covered

- Constitutional and Statutory Protections Related to Citizenship Status and Discrimination
- Addressing Chronic Absenteeism for ELL Students
- NJDOE Update and Resources
- ESSA and ELL Students
- Other Legal Issues
- Q & A



Panelists

- Jessica Levin, Esq., Staff Attorney, Education Law Center
- Cynthia Rice, Esq., Senior Policy Analyst, Advocates for Children of New Jersey
- Kenneth Bond, Program Development Coordinator, New Jersey Department of Education
- David Nash, Esq., LEGAL ONE Director

ELL Summit 2018

Access & Anti-Discrimination

Jessica Levin, Esq.
Staff Attorney, Education Law Center

Access and Enrollment

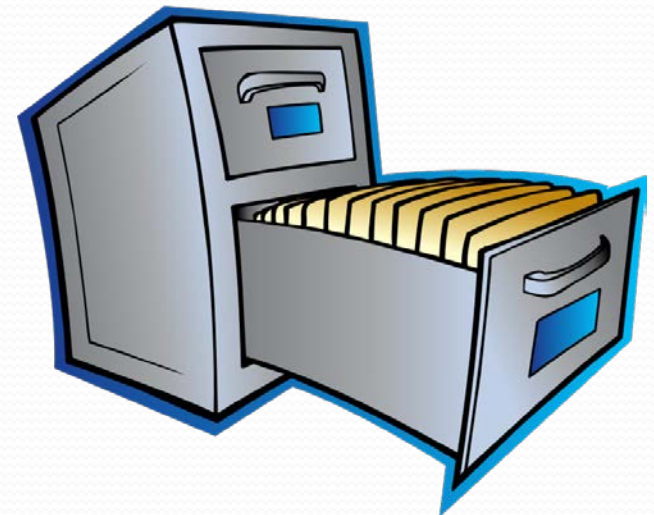
- *Plyler v. Doe*, U.S. Supreme Court, 1982
 - Under U.S. Constitution, undocumented student cannot be denied access to public education
 - “the public schools as a most vital civic institution for the preservation of a democratic system of government”
- Enrollment in NJ Schools:
 - Public schools cannot ask questions about, or condition eligibility on, citizenship or immigration status N.J.A.C. 6A:22-3.3 & 3-4
 - Prohibition on practices that chill or discourage families from enrolling children in school



Protection of Student Information

State and federal laws restrict the disclosure of personally identifiable student information to law enforcement, absent parental or guardian consent, a court order or lawful subpoena, or a health emergency.

20 U.S.C. 1232g(b), 34 C.F.R. 99.31, N.J.A.C. 6A:32-7.5



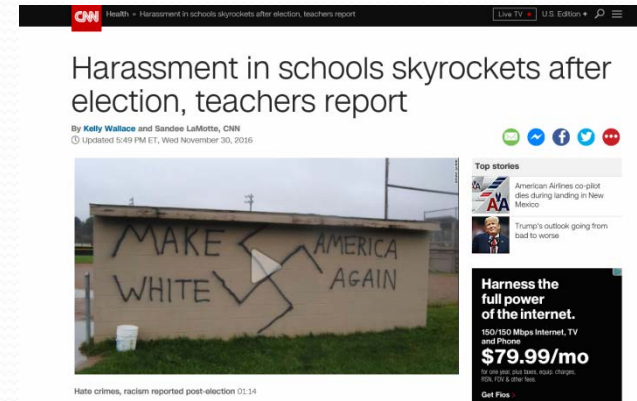
Anti-Discrimination

- **NJ Law Against Discrimination**
 - protects public school students
 - prohibits discrimination based on characteristics including race, creed, color, national origin, nationality, ancestry, age, sex, affectional or sexual orientation, gender identity or expression
- **Federal anti-discrimination laws**

NJ Anti-Bullying Bill of Rights Act

CNN, “Harassment in schools skyrockets after election, teachers report,” 11/30/16

- NJ ABBRA prohibits
 - harassment, intimidation or bullying of public school students
 - on the basis of their race, national origin, religion, disability, age, sexual orientation familial status or sex
- Requires schools to establish policies to prohibit bullying, including reporting and investigation



For More Information:

Education Law Center

Standing Up for Public School Children

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Chronic Absenteeism and English Language Learners: It's More than just Compliance

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May 2, 2018

Chronic Absenteeism Defined

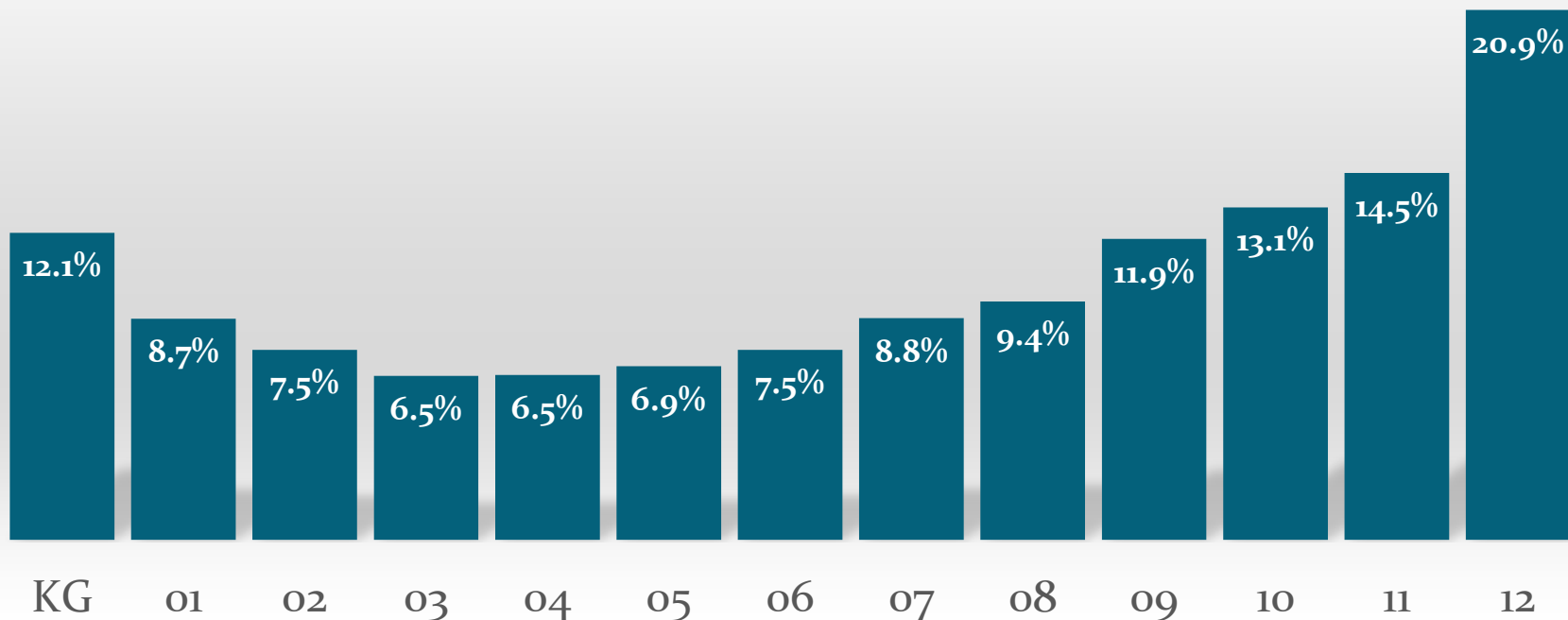
- **CHRONIC ABSENTEEISM** measures students who miss **10% of enrolled school days**, including excused/unexcused and suspensions
- **Average daily attendance** counts the average number of students who show up to school
- **Truancy** counts only unexcused absences

Chronic Absenteeism in NJ: A Snapshot (2015-16)

- 129,000 K-12 students in New Jersey were considered “chronically absent
 - That was **9.7 percent** of the total student population
- 18,000 NJ preschool students were considered “chronically absent
 - That was **27 percent** of the total preschool student population

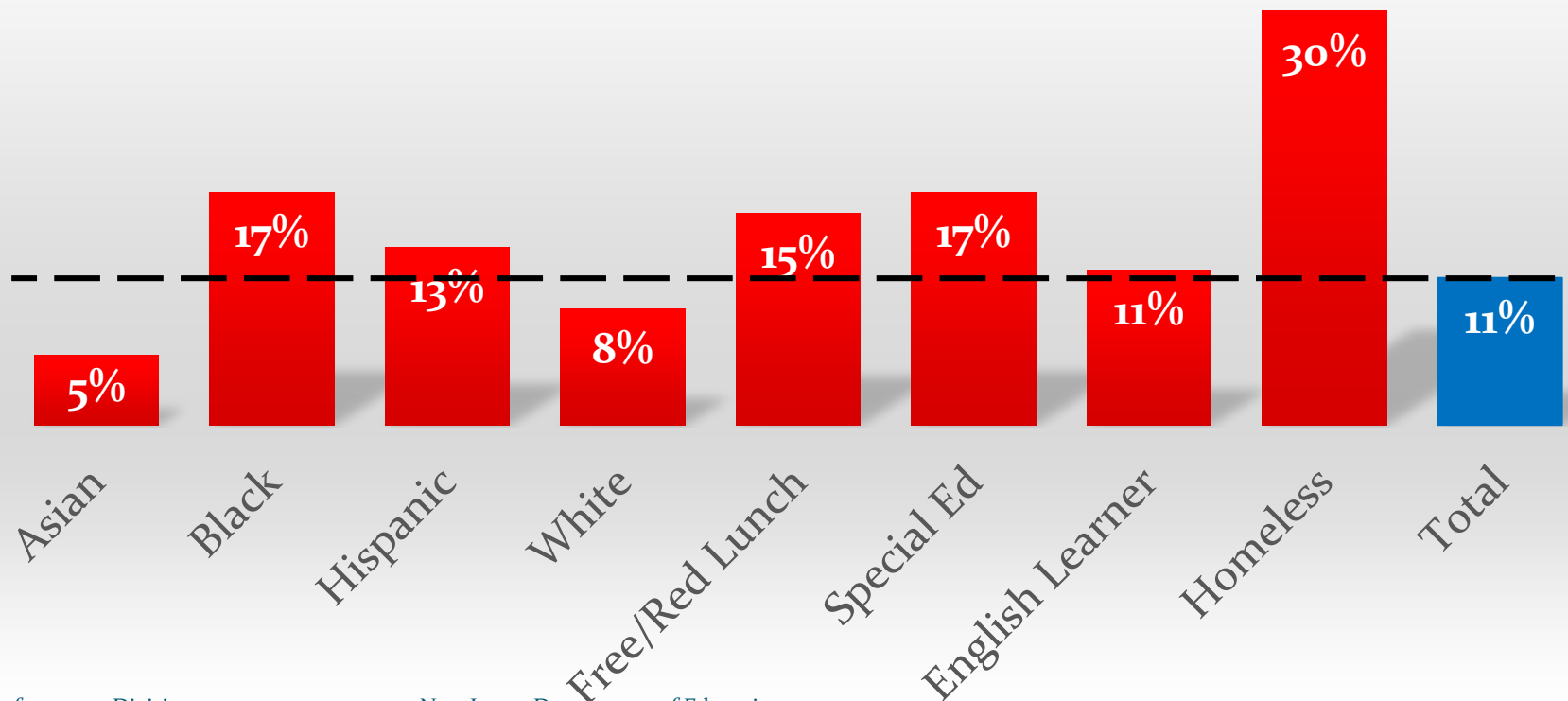
Chronic Absenteeism, by grade (K-12)

Percentage of students chronically absent by grade K-12,
2015-16



Absenteeism in Demographic Categories (PreK-12)

Absenteeism by Demographic Group, PK-12 School
Year 2015-16



Special Populations

Chronic Absenteeism Rate by Special Population

Total	Economically Disadvantaged Students	Students with Special Needs	English Language Learners
8%	6%	<u>22%</u>	8%
8%	12%	11%	<u>16%</u>
8%	<u>20%</u>	12%	<u>16%</u>

NJDOE Update

- NJDOE Website - <http://www.state.nj.us/education/bilingual/>
- Podcast - <http://www.state.nj.us/education/bilingual/podcasts/>
- NJDOE/LEGAL ONE Webinar – March 29, 2017
- ELL and ESSA

EL Toolkit

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

Published September 2015

CHAPTER 6



TOOLS AND RESOURCES FOR ADDRESSING ENGLISH LEARNERS WITH DISABILITIES

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

TOOLS AND RESOURCES FOR ADDRESSING ENGLISH LEARNERS WITH DISABILITIES

KEY POINTS

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



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

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

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

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

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

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

TOOLS AND RESOURCES FOR ADDRESSING ENGLISH LEARNERS WITH DISABILITIES

1

Foreign Student With HS Diploma

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

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

Key Questions to Consider

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

For Additional Information

- LEGAL ONE – www.njpsa.org/legalonenj
- NPSA / FEA – www.njpsa.org
- Advocates for Children of New Jersey – www.acnj.org
- Education Law Center – www.edlawcenter.org
- NJ Department of Education, Bureau of Bilingual/ESL Education - - <http://www.state.nj.us/education/bilingual/>