



**Enrollment, ELL's and Language Access Rights  
Long Island Advocacy Center**

# Overview

- School Enrollment for recently arrived immigrant students.
- English Language Learner (ELL) Issues:
  - Identification and Assessment;
  - English language acquisition;
  - Access to curriculum and extracurricular programs.
- Special Education services for ELLs
- Language Access rights of limited English Proficient (LEP) parents
- Every Student Succeeds Act (ESSA)

# Enrollment



# Enrollment

- All children between the ages of 5-21, regardless of their immigration status, have the right to a free public education (to be enrolled in their school district), if they reside in the district. **Plyer v. Doe, 457 U.S. 202 (1982)**
- All children enrolling in public school must begin attendance on the next school day. The parent has 3 business days to supply proof of residency. The District must make a residency determination within 3 business days of initial enrollment.
- Certain documents must be present to enroll in school\*
- A Child cannot be denied access to an appropriate education because of where they were born, or what language the child speaks.
- Teenagers CANNOT be turned away from high school, or sent to a high school equivalency diploma preparation program because of age, limited prior education, or for being a english language learner.

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# Schools cannot put up obstacles to enrollment

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Districts may not inquire about citizenship or immigration status to establish residency.

## **Social Security Numbers (SSNs):**

Districts may not use SSNs to establish residency.

Districts that use SSNs to create student identification numbers must inform families that providing a SSN is voluntary and explain the purpose for which the number will be used.

**State issued Identification and/or Driver's License** can be used to establish residency, but cannot be required.

**Birth Certificates:** Districts may not prevent a student from enrolling because the student does not have a birth certificate or has a foreign birth certificate

# Unaccompanied Immigrant Youth

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- Children under 18 who cross the U.S. border without a parent or legal guardian.
- Undocumented Youth – youth without lawful immigration status. Some may be in immigration proceedings.
- Unaccompanied immigrant youth may live with
  - A parent or other family member who is already in the U.S.;
  - A family friend, acquaintance or other sponsor.

# Unaccompanied Immigrant Youth Enrollment Issues

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**In order to enroll in school you must be able to prove residency in the district and the age of your child. Issues arise when:**

- Sponsors are not parents or legal guardians;
- Student lacks the assistance of a sponsor, parent or legal guardian at the time of enrollment;
- Student lacks documentation of age;
- Student lacks documentation to prove residency.

# Residency Determinations in NYS

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- Residency is determined by physical presence and intent to remain in the school district; (NYS Regulations 100.2(y)).
- A student is presumed to have the residency of the parents but this may be rebutted if the parents have relinquished custody and control of the child;
- The mere fact that a child continues to maintain a relationship with their parents who have otherwise relinquished custody and control of the child is not determinative in resolving the question of the child's residence. **Appeal of Goldman, 46 Ed Dept Rep 224, Decision No. 15,488; Appeal of Palmieri, 45 Ed Dept Rep 174, Decision No. 15,293.**
- Where the sole reason the child is residing with someone other than a parent of legal guardian is to take advantage of the schools of the district, the child has not established residency. **Appeal of Brown, 46 Ed Dept Rep 584, Decision No 15,602; Appeal of Proctor, 46 Ed Dept Rep 575, Decision No. 15,599.**
- **There are many ways to prove residency and schools may not only ask for a lease or a deed but must give choices.**



# Ways to Prove Residency

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- Lease or deed
- Affidavit (a written statement signed under oath) from the person you pay rent to, saying you live there.
- A letter from the person you pay rent to saying you live there.
- Other documentations such as:
  - Pay stub showing your address
  - Income tax form that shows your address
  - Utility bill or other bill in your name
  - Membership documents based on residency such as local library card.

- Voter registration card.
  - Driver's license, or permit or non-driver ID.
  - State or other Government issued ID.
  - Documents from government agencies such as a social service agency or the federal Office of Refugee Resettlement.
  - Custody or guardianship papers.
- If the school district decides that your child cannot attend school in the district because the child is not a resident, the district must give a written decision within two business days explaining its decision and how to appeal.**

# Ways to Prove Age

- Certified Birth Certificate (from any country).
- Baptismal record (from any country).
- Passport from any country.
- If you do not have any of the above the following may be used if you have had them for at least two years:

Driver's license,  
state or government ID,  
School Photo ID with date of birth,  
Consulate ID card,

Hospital or health records,  
Military dependant ID card,  
Court orders,  
Native American tribal documentation,  
records from international aid agencies or  
voluntary agencies,  
Other documents from federal/state/local  
agencies such as Department of Social Services, Office of  
Refugee Resettlement.

# Immunizations

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- Under the Public Health Law, districts may give parents up to 14 days to submit evidence of required immunizations if there is a good faith effort to obtain immunizations or evidence of immunizations.
  - This period can be extended to 30 days for students known to be entering from outside the country.
  - NYSED recommends that districts allow new entrants the maximum period allowable under the Public Health Law to submit evidence of immunization.

# McKinney Vento

“The McKinney-Vento Homeless Education Assistance Act is a federal law that discusses the public education of children and youth in temporary housing. Under McKinney-Vento and state law, students are considered to be in temporary housing if their nighttime residence is not fixed, regular, and adequate.”



# Unaccompanied Immigrant Youth and McKinney-Vento Eligibility

- Newly arriving immigrant youth may also be considered “homeless” youth, depending on their housing circumstances.
- Unaccompanied immigrant youth may be protected by the McKinney-Vento Act if their housing is not fixed, regular and adequate.
- Many unaccompanied immigrant youth released to sponsors will be eligible and as such entitled to immediate enrollment even without any records.

- A Student is likely to be McKinney-Vento eligible if:
  - The youth is released to a sponsor who is not a parent, **AND**
  - The sponsor does not have or intend to seek legal custody or guardianship, **AND**
  - The Youth was forced to leave home because of poverty or violence in the child’s home country (i.e., constructive loss of housing), **OR**
  - The sponsor (parent, relative, family friend) is living in doubled-up situation due to loss of housing or economic hardship and youth is living with the sponsor in a temporary housing arrangement.

# English Language Learners

# English Language Learners (ELLs)

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- **Title VI of the Civil Rights Act of 1964:** “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 USC Sec. 200d.
- **Lau v. Nichols, 414 U.S. 563 (1974):** “There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education. Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education.” 414 U.S. at 566.

# ELLs

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- **Therefore:**
  - **1. Students cannot be denied access to education based on national origin, which includes limited English proficiency.**
  - **2. Districts must take steps to ensure ELLs can meaningfully participate in educational programs and services and take “affirmative steps” to overcome language barriers.**



# ELLs

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## ● **Equal Education Opportunities Act (1974):**

“No state shall deny equal educational opportunity on account of...national origin by...the failure by an education agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional program.” 20 U.S.C. Sec. 1703 (f).

- Prohibits school districts from discrimination against students based on national origin.
- Requires districts to take measures to overcome language barriers.
- Requires schools to provide instruction in both English and content areas.
- Prohibits segregation based on national origin

# ELL Screening, Identification, Placement, Review and Exit Criteria

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● Pursuant to NYS Regulations (CR Part 154-2) Districts must have a process in place to screen, identify and place students within 10 school days from enrollment date.

● **Screening:**

-Home Language Questionnaire (A diagnostic screening instrument used to determine which students are possible ELLs).

-Individual Interview;

-Screen for disability;

-Assessment to identify ELLs: reading, writing, speaking and listening proficiency (NYSITELL);

-Determine if SIFE (Student with Interrupted/Inconsistent Formal Education), using SIFE questionnaire and diagnostic tool;

# Parent Notification of ELL Identification Determination

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- Within 5 school days of a student being identified as an ELL, parent/guardians are to receive **written** notice in their indicated preferred language, including the:

- Parents' right to seek a Review of ELL Identification Determination;

- ELL's English language proficiency level

- Information regarding the Parent Orientation session.

- **Parent Orientation for New ELLs:**

Prior to an ELL's placement in a Bilingual Education (BE) or English as a New Language (ENL) program, Districts are required to provide the parents/guardians of new ELLs with a high quality orientation session in their indicated preferred language. The session must include information regarding New York State Common Core Learning Standards, assessments, school expectations for ELLs and program goals and requirements for BE and ENL programs.

# ELL Program Placement

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- Student must be placed within 10 school days of enrollment;
- Bilingual Education is the default program for ELL instructional placements (parents may opt out of BE and enroll in ENL program);
- Parents/guardians must receive written notification of their child's ELL program placement:
  - A BE program is required in a school when 20 or more recently enrolled grade level students speak the same home language. If there are not enough qualifying students in a school, but there are within its district, the district must provide a BE program as well as transportation.
  - If the district does not have the required numbers of students to have a BE program, then the student will be placed in an ENL program and counted towards the numbers that are necessary to open a future program.
- **The parent retains the right to make a final decision regarding the placement of their child in a BE program or ENL program and may exercise their right to place their child in an ENL program.**

# ELL Instruction

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- **English as a New Language (ENL):**                      **Goal:** Learn English. **Method:** using English only.

- **Bilingual Programs (BE):**

  - Transitional Bilingual Program:**

    - Goal:** learn English. **Method:** using English and Native Language, transitioning from Native Language to English.

  - Maintenance Bilingual Program:**

    - Goal:** learn English and maintain Native Language. **Method:** using both English and Native Language.

  - Dual language program:**

    - Goal:** learn English and Native Language. **Method:** using both languages.

# ELL Exit Criteria

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- **Upon exiting ELL status, an ELL is entitled to 2 years of Former ELL Services and testing accommodations on NYS assessments.**

- **ELL Exit Criteria:**

- Grades K-12: Scoring at the Commanding Proficient Level on the NYSESLAT; or

- Grades 3-8: Scoring at the Expanding/Advanced Level on the NYSESLAT, and 3 or above on the NYS ELA assessment in the same school year; or

- Grades 9-12: Scoring at the Expanding/Advanced level on the NYSESLAT and 65 or above on the Regents Exam in English.

- **The same exit criteria pertain to ELLs with disabilities, but they must receive testing accommodations listed in their IEPs.**

# ELL Access to School Programs

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- ELLs must be provided with equal access to education:

- Core curriculum

- Curricular programs including pre-K, magnet programs, CTE, AP, IB, programs

- Extracurricular activities.

- ELLs must not be segregated on the basis of national origin or ELL status.

- Newcomer programs must meet the following criteria:

- Voluntary;

- Attendance is for a limited duration, not longer than a year;

- Students should transition to general education program;

- Instruction and services must be comparable to district's other schools;

- Newcomers should be encouraged to participate with general education students during lunch, art ,gym, and music;

- Regular evaluations of English proficiency to allow for transition to general education programs throughout the school year.

# ELLs with Disabilities

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- ELLs with disabilities must receive instruction and services that address both their English language acquisition needs and their disability.
- Under-identification and over identification:
  - Districts cannot delay/deny evaluations because of a student's ELL status;
  - Districts cannot identify ELLs as students with a disability based on their ELL status.
- Evaluation of ELLs should be administered in the Native language.
- IEP teams must consider the language needs of ELLs as those needs relate to the student' IEPs.
- Ells with disabilities must take annual assessments measuring English language progress and proficiency.



CSE

Special education is a program providing specialized instruction, support, and services for students with disabilities. Children who receive special education services, will be educated in a program which meets their specific needs. This could be in a General Education classroom, a Resource Room for one period each day, in a small special class setting, or in out-of-district programs. Students may also receive “Related Services” such as occupational therapy, physical therapy, speech therapy, counseling, etc. The types of programs and services a Special Education student receives is individualized and based on the student’s specific needs.



# Individuals with Disabilities Education Act (IDEA)

## Six Principles

1. Free appropriate public education (FAPE)
2. Appropriate evaluation
3. Individualized education plan (IEP)
4. Least Restrictive environment (LRE)
5. Parent/student participation in making decisions
6. Procedural safeguards

# Special Education Process

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1. Referral to Committee on Special Education (CSE)
2. Evaluations
3. CSE Meeting (review evaluations, discuss student's needs and performance in school, determine eligibility, and if appropriate, develop and create the student's IEP)
4. Implementation of IEP
5. Annual review
6. Reevaluation

**Initial Referral to the Committee on Special Education Timeline**



Initial referral/Parental Consent signed



Evaluations



Written notice to parents for CSE meeting



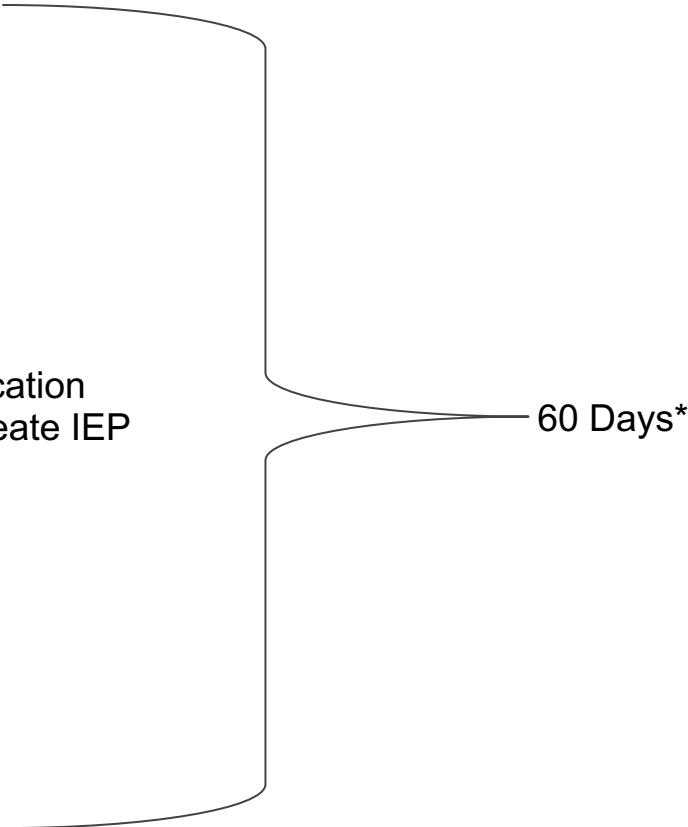
CSE meeting to determine Special Education Eligibility, and if appropriate, develop/create IEP



Parental consent for school to provide agreed upon Special Education program and services



Implementation of Special Education program and services



# Evaluations

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- Psychological
- Educational
- Psychiatric
- Neuropsychological
- Functional Behavioral Assessment (FBA)
- Occupational Therapy
- Physical Therapy
- Speech and Language

# NYS Special Educational Disability Classifications

1. Autism
2. Deafness
3. Deaf-Blindness
4. Emotional Disturbance
5. Hearing Impaired
6. Intellectual disability
7. Learning disability
8. Multiple disabilities
9. Orthopedic impaired
10. Other health-impaired
11. Speech or language
12. Traumatic brain injury
13. Visual impairment (which includes blindness)

# LANGUAGE ACCESS RIGHTS



# Language Access Rights

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- **Title VI of Civil Rights Act of 1964, 42 U.S.C. Sec. 2000d et seq.**
- **U.S. Department of Justice and U.S. Department of Education joint Dear Colleague letter, January 7, 2015.**

Both require that School districts must “take reasonable steps to ensure meaningful access to their programs” and “adequately notify” limited English proficient (LEP) parents of school programs and activities that are called to the attention of non-LEP parents.

# School District Language Access Obligation

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- Communicate with LEP parents in a language that they understand about any program, service or activity that is called to the attention of non-LEP parents;
- Develop a process for identifying LEP parents and informing them of the availability of language assistance services.
- Provide language assistance even when parents have some knowledge of English.
- Provide language assistance free of charge.
- Provide qualified translators and interpreters.

Students may not translate or interpret.

Untrained school staff may NOT translate or interpret.

**EVERY STUDENT SUCCEEDS ACT (ESSA)**

# ESSA and ELLs

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- ESSA, first passed in 1965, is a piece of civil rights legislation. Its whole purpose is to provide federal funds to states and districts to overcome disadvantages faced by student who have traditionally fallen through the cracks or have been intentionally ignored.
- ESSA is the federal education law that holds states, districts and schools accountable for student performance in order to receive funding (NYS receives \$1.6 billion from the federal government each year).
- ESSA requires schools to report how well students learning English and students from various ethnic backgrounds are doing in school, and it requires action if students need more support.
- ESSA lays out rules for academic standards, accountability and parent and family engagement. It looks at the way schools identify, serve, test and report information about students who do not speak English.

# Parent and Family Engagement

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- Right now districts and schools are collecting data about their performances that they will then report to the New York State Education Department. The State will use this data to evaluate school performances. Parents will be given access to school performance information. Where schools are performing poorly, parents will be given an opportunity to participate in the school improvement process.

# Assessment of ELLs

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Under ESSA, all schools will be evaluated on the following:

- student test scores on annual Math and English tests
- performance on Science tests
- out of school suspensions
- chronic absenteeism-when students are absent for 18+ days
- for English Language Learners, progress in learning English**

●Under ESSA, high schools will also be evaluated for:

- Graduation rates
- College, Career and Civic readiness
- performance of Social Studies tests.

# Assessments

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- For each measure, schools will look at how different categories of students are performing. The categories are:

1. **race/ethnicity: e.g. Latino vs. White**
2. **income: low income vs. wealthy**
3. **Students with disabilities**
4. **English Language Learners**

# Accountability

- NYS is going to give each school in the state a school report card. This will show how schools are doing on the measures.
- These report cards will be online and in paper and will be available **in Spanish**.
- NYS will identify the lowest performing schools and require them to make improvements:
  - Schools needing improvement will be required to ask for parents input.
  - Schools will have to develop an improvement plan, with parental input.
  - Schools will have three years to make improvements.
  - Schools who fail to improve can be placed in state receivership.





Questions?



# Contact Information

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