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**Testimony to New Jersey State Board of Education  
On Readoption of N.J.A.C. 6A:15, Bilingual Education  
Jessica Levin, Education Law Center  
June 3, 2015**

Good afternoon, and thank you for the opportunity to testify. My name is Jessica Levin. I'm an attorney at Education Law Center (ELC) in Newark, where my work focuses on advocacy for English Language Learner students (often known as ELLs), the parents of ELLs, and limited English proficient (or LEP) parents of both ELL and non-ELL children.

As discussed at this morning's session, the Department of Education has proposed to readopt with amendments our state's Bilingual Education Administrative Code, located at N.J.A.C. 6A:15. As the Board engages in early deliberations about these regulations, I would like to offer preliminary comments on a few of the amendments proposed in the first discussion paper and some additional suggestions to make the Code clearer, more closely aligned with federal law, and better able to protect the rights of ELLs and parents.

The first discussion paper on the readoption of N.J.A.C. 6A:15 proposes several positive amendments. These include the replacement of all references to Limited English Proficient students with the now more common nomenclature of English Language Learner, and a 30 day deadline for notifying parents that their child has been identified as an ELL, which will help align the Code with federal law. However, the proposed amendments require additional explanation by the Department in order to elicit stakeholder comments, and do not go far enough to ensure the protection of parent and student rights.

In replacing references to "limited English proficient students" with references to "English language learners," the Department has also proposed a definition of "English language

learner” in Section 1.2 of the Code. Although this will replace the definition of “limited English proficient (LEP) students” that is being deleted, the proposed definition of an ELL is notably different from the old definition of an LEP student. The definition of ELL, unlike LEP student, does not explicitly include preschoolers. It also refers to students “in the process of learning English,” eliminating the LEP definition’s explicit inclusion of students with difficulty in any one of the language skill domains of speaking, reading, writing, or understanding English. The Department should explain all changes in the new ELL definition, and amend that definition to explicitly include preschoolers and students with difficulty in any language domain or otherwise ensure that the new definition will not exclude students who should be eligible for language assistance programs.

As I mentioned, the Department has also proposed an amendment to the Notification provisions of the Code in Section 1.13, specifying that notification to parents of their child’s identification as an ELL will be issued within 30 days of that identification. This amendment corresponds more closely with the timeline in federal law (which mandates notification within 30 days of the start of the school year), but the Code still falls short of including other important notification obligations in the same section of Title III, 20 U.S.C. § 7012(a), which applies to entities using Title III funds to provide language instruction educational programs. That provision requires notification within 30 days not just of the fact that a child has been identified, but also the reason for identification, the child’s level of English proficiency and how such level was assessed, the method of instruction in the program in which the child will be placed and methods used in other available programs, how the program will meet the child’s educational strengths and needs as well as help the child learn English and meet academic goals, the exit requirements for the program, and, in the case of students with disabilities, how the program

meets the objectives of the child's Individualized Education Program (or IEP). The additional information required by this provision of federal law, which is crucial to parental participation and informed decision-making, should be added to the Notification section of N.J.A.C. 6A:15. In order to facilitate continuing parental participation, the Code should also explicitly require that districts provide parents with the results of the annual English language proficiency testing currently required by Section 6A:15-1.10(b).

I would also like to call to the Board's attention the need for increased translation and interpretation services for New Jersey parents of public school students. The New Jersey Administrative Code currently provides some translation and interpretation rights, in both the Bilingual Education and Special Education sections, but these rights must be broadened and better enforced. One group of parents often, and perhaps inadvertently, excluded from these protections is limited English proficient parents who do not necessarily have ELL children. Whereas ELLs make up approximately 4.5% of New Jersey students, the Social Impact statement of the first discussion paper notes that "[m]ore than 20 percent of all public school students in New Jersey come from homes where a language other than English is spoken." When the letter of the law protects only the parents of ELLs, thousands of New Jersey LEP parents are denied full participation in their children's education.

ELC recommends amendment of N.J.A.C. 6A:15-1.13 to explicitly include rights for LEP parents. For example, subsection (c) of the notification provisions states that "[p]rogress reports shall be written in English and in the native language of parent(s) of students enrolled in the bilingual and ESL program." These translated progress reports are essential in giving parents of ELLs the ability to monitor their children's progress in school. However, the Code does not provide this crucial right to limited English proficient parents whose children are not enrolled in

a bilingual or ESL program. Extending the translation requirement in this logical way will allow thousands of additional parents to more fully participate in their children's education.

Explicating the meaning of progress reports—which should include report cards as well as progress reports on the IEPs of special education students—would also be a useful clarification.

The need for more ample translation services does not end with report cards and progress reports. A joint guidance document issued on January 7, 2015 by the U.S. Department of Justice and the U.S. Department of Education, entitled “Dear Colleague Letter: English Learner Students and Limited English Proficient Parents,” emphasized the need for meaningful communication with LEP parents. I would like to highlight a short section from pages 38-39 of that guidance; it states:

School districts and SEAs have an obligation to ensure meaningful communication with LEP parents in a language they can understand and to adequately notify LEP parents of information about any program, service, or activity of a school district or SEA that is called to the attention of non-LEP parents. At the school and district levels, this 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.

Special education proceedings present a persistent area of insufficient and inadequately translated information for LEP parents. ELC recommends that the Department consider additions to the Administrative Code that would ensure adequate translation of special education documents including IEPs and evaluations, and high-quality oral interpretation at meetings, in order to comply with mandates in federal and state law that parents be fully informed in their native language of all information relevant to activities for which their consent is sought. Furthermore, ELC urges the Department to give thorough consideration during this Code

readoption process to the Dear Colleague letter's explicit mandate to ensure communication in a language parents can understand in all the areas included in the quote I shared.

Finally, ELC urges the Department to add stronger enforcement mechanisms to Section 6A:15. My work providing legal assistance to ELLs and LEP parents has revealed numerous instances of districts failing, in particular, to comply with the most basic notification and translation rights contained in the Administrative Code. This includes special education notifications, for which translation is specifically mandated under both federal and state law, and other critical information that LEP parents cannot access without translation. N.J.A.C. 6A:15-1.6(b) requires the Department to "establish procedures for monitoring and evaluation of district bilingual/ESL programs." Adding an explicit requirement for the Department to monitor compliance with parental notification and translation rights is warranted. Additionally, ELC encourages the Department to establish a complaint investigation system comparable to that which exists for special education at N.J.A.C. 6A:14-9.2, so that the correction of violations to the Bilingual Education Administrative Code need not await the Department's monitoring, but can occur whenever violations are brought to the Department's attention. Although New Jersey regulation already provides some excellent protections to ELLs and parents, and we are hopeful that they will be amplified, these rights are meaningless if districts are unaware of or unwilling to abide by them.

ELC stands ready to work with the Department in developing amendments which clarify and strengthen N.J.A.C. 6A:15 and permit its rigorous enforcement. Thank you for the opportunity to share these suggestions with the State Board of Education today. I would be happy to answer questions from the State Board or submit additional information on this important topic.