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Written Testimony to New Jersey State Board of Education
On Proposed Readoption with Amendments at N.J.A.C. 6A:15, Bilingual Education
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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) submit this joint testimony in response to the New Jersey Department of Education's (NJDOE or Department) publication of a First Discussion document proposing readoption with amendments of the New Jersey Administrative Code for Bilingual Education, N.J.A.C. 6A:15 (Bilingual Education Code or Code).¹

We commend the Department for its thorough review of the existing Code, for proposing many positive amendments, and for considering our previous suggestions. However, there are several key recommendations explained in testimony we submitted in November 2021 and March 2022 that we strongly believe should also be incorporated in the Bilingual Education Code.

We wish to highlight in particular two of these recommendations: 1) requiring NJDOE and school districts to provide essential information and communications in the primary languages of parents and caregivers who do not speak English; and 2) establishing a "complaint investigation" system for violations of laws protecting Multilingual Learners (MLs), comparable to that which exists for special education. Without these features – which are already considered essential for students with disabilities and enshrined in special education regulations – the Bilingual Education code cannot truly protect the rights of MLs and their families. The Department has not proposed any changes or additions to the Code to implement these crucial recommendations but we are hopeful it will do so in the next step of the code readoption process.

It is important to emphasize that some of the recommendations below – including those pertaining to meaningful communication with multilingual families – are reflected in federal guidance yet do not currently exist in the Bilingual Education Code. Moreover, in November 2021, NJTESOL/NJBE, NJCIC, and ELC released a report titled [*English Learners in New Jersey: Exposing Inequities and Expanding Opportunities in the Wake of the Pandemic*](#) that illustrates the urgent need to implement these recommendations. Thus, the changes we propose are essential to align the Bilingual Education Code with existing legal requirements and to rectify substantial inequities in the education of New Jersey's ML students that have existed for years and were exacerbated by the pandemic.

¹ Consistent with the Department's own proposed changes in language and our previous recommendations, we suggest NJDOE rename Chapter 15 the "Multilingual Learner Education Code."

1. 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 (addition to proposed N.J.A.C. 6A:15-1.5).

We acknowledge and appreciate the positive Code amendments proposed by the Department to improve the Three-Year Plans submitted by districts providing language instruction educational programs (LIEPs). However, provisions to ensure compliance with these plans, and thus the Bilingual Education Code overall, must be a centerpiece of the revised Code. Without proper mechanisms in place for NJDOE to ensure district compliance, MLs and their families will continue to be underserved by districts that are not fulfilling their legal obligations, as revealed by our 2021 report.

We remain concerned that NJDOE's proposed revisions to the provisions of the Code covering the Three-Year Plans – despite being significant steps in the right direction – are inadequate to fully meet the Department's stated commitment to transparency and accountability in ensuring all MLs receive high-quality and equitable educational opportunities. We suggest NJDOE:

- I. Institute formal and transparent affirmative measures requiring the Department to ensure districts comply with the Bilingual Education Code, and outline these requirements within the Code itself – rather than relying on the currently proposed Section 1.5(e), which states the Department will establish procedures for monitoring and evaluation of districts' LIEPs, presumably through sub-regulatory guidance;
- II. Include in those measures a process of robust NJDOE evaluation of districts' Three-Year Plans not just at submission but also at mid-way and the end of the three year period, to determine fidelity of implementation and effectiveness in serving the district's ML 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; and
- III. Develop and implement these accountability systems with the engagement of multiple stakeholders (including educators, parents and caregivers, statewide and local advocacy groups, and community members) who have an interest in the Code's proper implementation.

2. Establish a “complaint investigation” system for violations of laws protecting MLs, comparable to that which exists for special education at N.J.A.C. 6A:14-9.2 (addition to proposed N.J.A.C. 6A:15-1.5, or section added to 6A:15).

While parents and stakeholders may submit concerns directly to ELL@doe.nj.gov and parents@doe.nj.gov, the Office of Supplemental Educational Programs does not clearly communicate a formal process for investigating complaints nor for issuing corrective action requirements. And while we appreciate the process posted on the Department's website for ESEA complaints, which includes Title III, there is an urgent need for a clear and dedicated avenue to address violations of the state's Bilingual Education Code. If NJDOE's position is that the ESEA complaint process covers state law including the Bilingual Education Code, this must be made clear within the Code itself. The number of relevant concerns regarding violations of the Code, and the seriousness of these

concerns, have been well documented in [our 2021 report](#) and the recent [Newark Public Schools settlement with the United States Department of Justice](#).

A formal process for investigation of such violations should be clearly displayed on the landing page in the section of NJDOE’s website devoted to MLs. This page – along with translated versions – should clearly display the steps in submitting a complaint, what to expect after a complaint is submitted, how violations are resolved, and how to file an appeal of a determination. And this process and set of requirements must be formalized in the Bilingual Education Code. A formal complaint investigation process is essential to augment the proactive NJDOE monitoring and evaluation procedures outlined in the previous recommendation.

3. Establish a clear and comprehensive definition of language accommodations, including first and target language supports that provide access to content concepts, and require such language accommodations in every classroom where MLs are students (additions to N.J.A.C. 6A:15-1.2 and 6A:15-1.4(c)).

Language accommodations involve communicating in ways MLs currently understand while sequencing and scaffolding instruction to foster the learning of grade-level content. They include, but are not limited to: translation tools, visuals, dictionaries/glossaries, summaries, partner work, word banks, and teacher talk. Our 2021 report revealed a severe lack of language accommodations in New Jersey schools, with nearly one third of survey respondents reporting that there were no such accommodations for MLs in English-only classrooms before the pandemic.

The Danielson/ELL Crosswalk tool previously cited by NJDOE as sufficient to assist districts in providing language support is “solely meant to be a companion to the Danielson Framework classroom observation instrument” for bilingual/ESL teachers. It therefore does not adequately address our recommendation for implementing language accommodations, and for doing so in every classroom where MLs are students. Our recommendations relate not to whether school districts have access to a resource that can assist them in providing language supports – though that is welcome – but rather to the lack of a legally binding definition of, and requirement for, language accommodations in the Bilingual Education Code. Such an addition is crucial to affirm the importance of such accommodations and ensure they are implemented statewide.

4. Require that essential information and communications from NJDOE and school districts be provided in a language that ML parents and caregivers understand and a format that is accessible (addition to proposed N.J.A.C. 6A:15-1.12).

In alignment with federal law and guidance,² NJDOE and New Jersey school districts must ensure meaningful communication with parents in a language they can understand. Information about programs, services, and activities that must be provided in parents’ primary 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

² See, e.g., U.S. Department of Justice & U.S. Department of Education, *Dear Colleague Letter: English Learner Students and Limited English Proficient Parents* 37-40 (2015), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

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. 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.

Currently, there are only a handful of documents for which the Bilingual Education Code requires translation: notices of placement in or exit from LIEPs, progress reports, and (in a separate section of the code) special education notices. This gives the distinct impression that districts do not need to translate other types of documents, when the opposite is true – failure to require translation of other key documents leaves the Bilingual Education Code at odds with federal law. Similarly, the lack of any requirements in the Code to provide interpreters to convey key information to ML families that is being provided orally to English-speaking families is out of sync with federal requirements.

NJDOE's stated commitment to ensuring that school districts and families are provided with information and communications in multiple languages and an accessible form is not being realized across the state. There is an urgent issue of lack of compliance with federal law and guidance, as well as existing state requirements. For example, many districts, especially smaller districts with fewer numbers of MLs, are not providing quality interpretation or translation services except for, in some cases, special education testing. NJDOE itself has not translated the 2019 version of its own Parental Rights in Special Education handbook into any other languages. We continue to recommend that NJDOE and school districts dedicate funding and support to ensure essential information and communications are in a language that multilingual parents and caregivers understand and a format that is accessible. This crucial work must start with a clear requirement in the Bilingual Education Code that all information brought to the attention of English-speaking parents / caregivers by NJDOE and districts must also be provided in their own primary language to parents who do not speak English.

5. Address and resolve barriers posed by lack of funding to newly proposed N.J.A.C. 6A:15-1.8(e) requiring bilingual instructional support staff to hold a bilingual paraprofessional credential.

While we feel that training and certification is important, this requirement will be a burden to the educational professionals who provide essential services at the lowest step of the pay scale. It is a barrier to recruiting critical support staff who reflect the racial, ethnic, and linguistic demographics of our New Jersey student population. We would support a **fully funded** professional development certification program.

6. Consider and remedy barriers to 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 (addition to N.J.A.C. 6A:15).

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. In the midst of a teacher shortage, NJDOE must act with urgency to invest in

recruitment and retention [beyond guidance](#) and professional development. It must articulate and invest in infrastructure that supports the development of career pathways (“grow your own” programs) with specific focus on the recruitment of bilingual and/or Black, Indigenous, and people of color (BIPOC) educators, mental health professionals, counselors, and administrators. This is an urgent need that cannot wait to be addressed and must include the elimination of barriers to licensure of ESL/Bilingual educators such as edTPA, which is unreliable, redundant and unnecessary.

Thank you for the opportunity to offer this written testimony. We would be happy to provide further information or assistance. We stand ready to work in partnership with NJDOE to make revisions to the Bilingual Education Code that will protect the legal rights of ML students and their families and ensure all MLs have the resources and opportunities necessary for a high-quality education.