



**RIGHTS OF LINGUISTIC MINORITIES IN THE U.S. : 40 YEARS
AFTER THE LAU V. NICHOLS DECISION**

**SAN FRANCISCO, CALIFORNIA
SEPTEMBER 12, 2014**

SIGNIFICANCE OF LAU V. NICHOLS



“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...”



OVERVIEW

- **Significance of Lau v Nichols**
 - **History**
 - **OCR Activities**
- **National Profile**
- **Enforcement Challenges**
 - **OCR data**
- **Renewed Focus**
 - **US Department of Ed**
 - **OELA**
 - **Moving Forward**



HISTORICAL CONTEXT

60s

- Sink or Swim – little or no provision for English Learners
- Department of Ed's Office for Civil Rights awareness

70s

- ED issued the 1970 memo
- **Lau v. Nichols 1974**
- Equal Education Opportunities Act of 1974

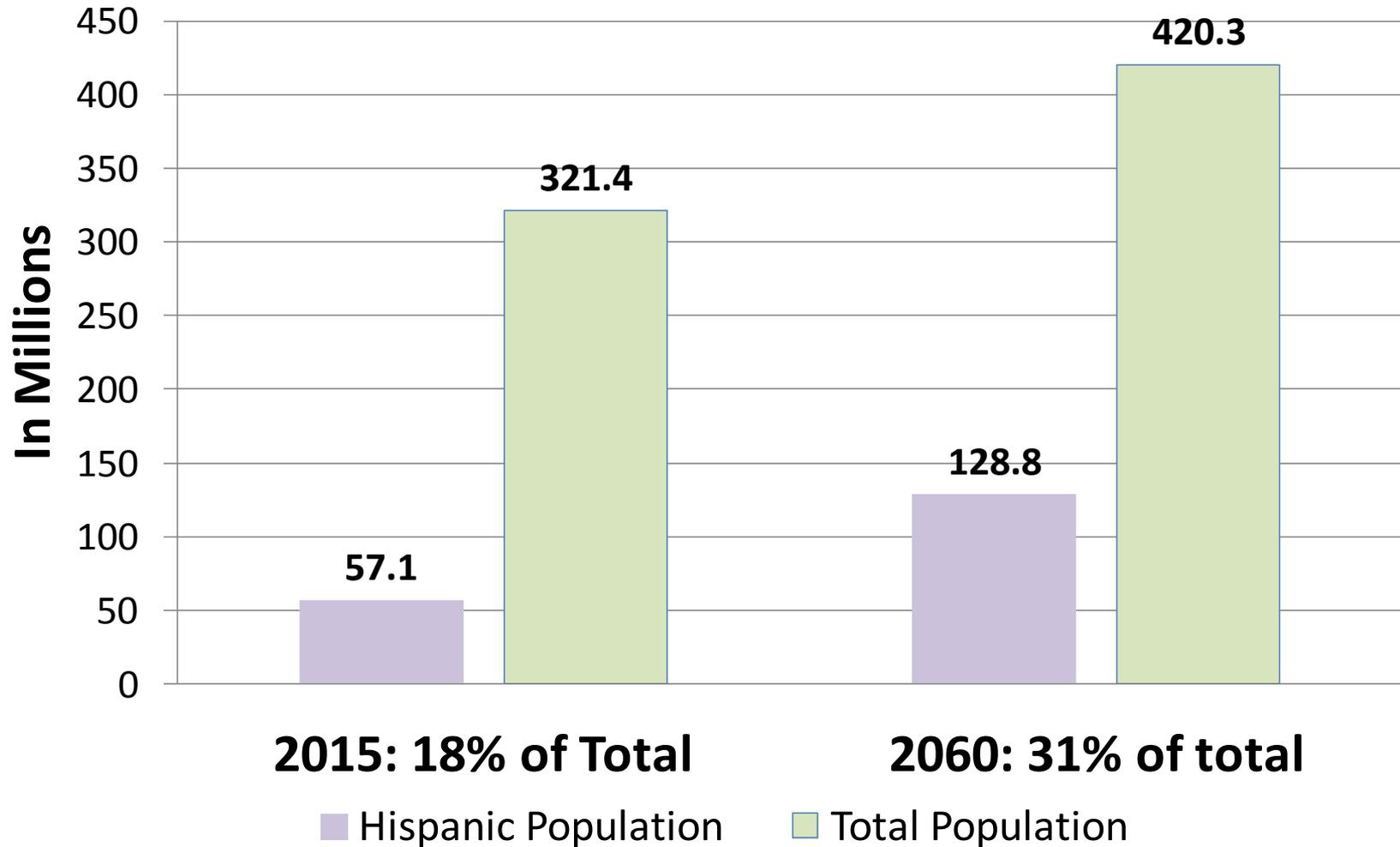
80-90s

- Castaneda v. Pickard 1981
- ED Policy Guidance issued '84, '85, '90, '91 remain in effect

WHERE ARE WE TODAY?



PROJECTED HISPANIC GROWTH

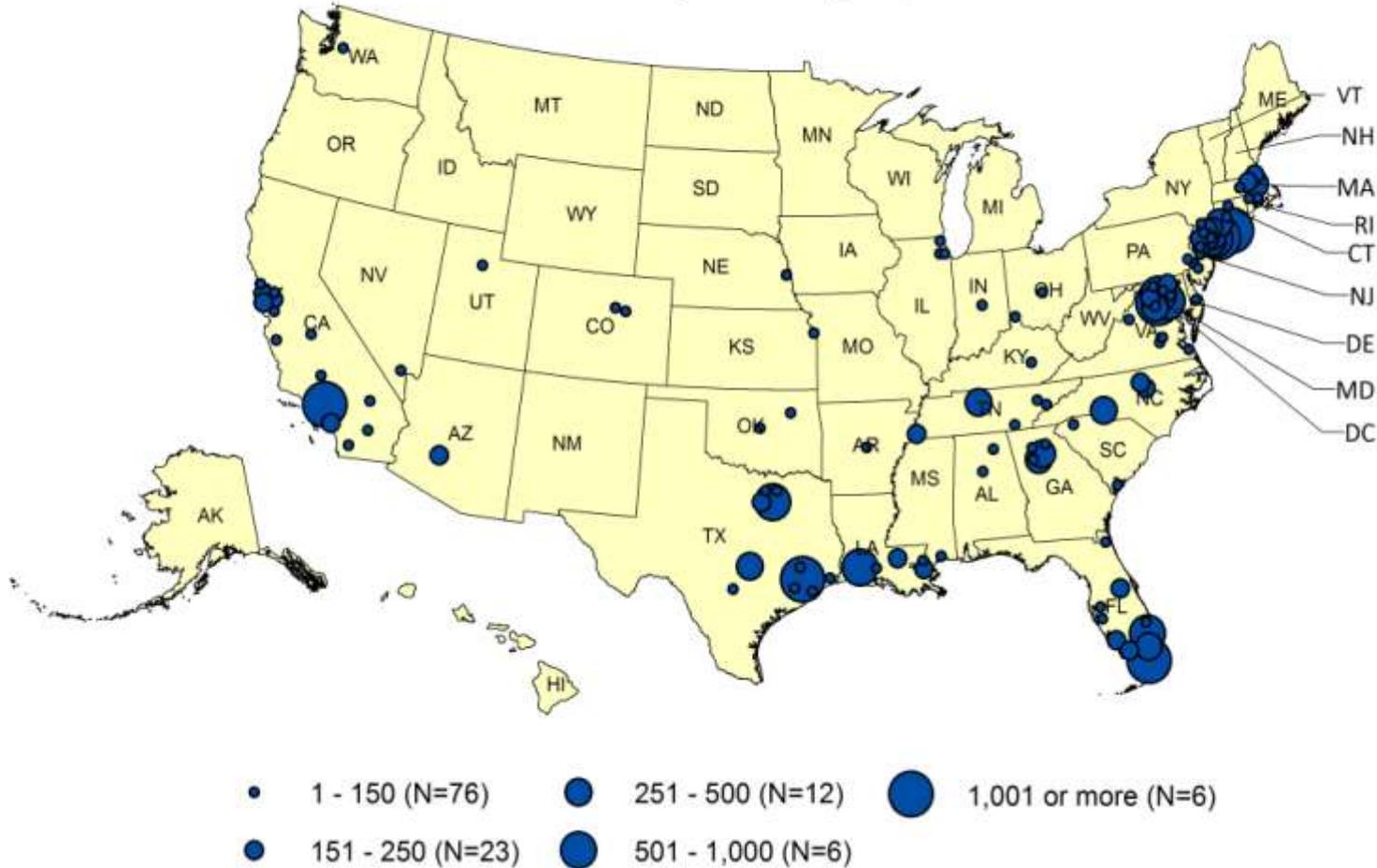


Source: U.S. Census Bureau, Population Division Projections of the Population by Sex, Race, and Hispanic Origin for the United States 2015 to 2060 (2012).



UNACCOMPANIED CHILDREN

Unaccompanied Children Released to Sponsors by County
January 1 to July 31, 2014



Source: U.S. Department of Health and Human Services, August 2014.



STATES WITH HIGHEST EL ENROLLMENT: 2011-12

State	EL Enrollment	Total Enrollment	Percentage of ELs
California	1,434,202	6,287,834	22.8%
Texas	746,466	5,000,470	14.9%
Florida	234,451	2,668,156	8.8%
New York	205,397	2,704,718	7.6%
Illinois	170,631	2,083,097	8.2%

Source: U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), "Local Education Agency (School District) Universe Survey", 2011-12 v.1a; "State Nonfiscal Public Elementary/Secondary Education Survey", 2011-12 v.1a.



CALIFORNIA DISTRICTS WITH HIGHEST EL ENROLLMENT: 2012-13

District	EL Enrollment	Total Enrollment	Percentage of ELs
Los Angeles Unified	170,797	655,494	26.1
San Diego Unified	33,851	130,270	26.0
Santa Ana Unified	26,226	57,410	45.7
Garden Grove	18,825	47,599	39.5
Long Beach Unified	17,550	82,256	21.3
San Francisco Unified	14,826	56,970	26.0
Statewide Total	1,347,245	6,236,880	21.6

Source: California Department of Education.



TOP FIVE LANGUAGES SPOKEN BY ELS NATIONALLY: 2011-12

Language	Number of ELs
Spanish	3,562,860
Chinese	88,798
Vietnamese	79,021
Arabic	64,487
Hmong	40,445

Source: EDFacts/Consolidated State Performance Report, 2011-12.



TOP FIVE LANGUAGES SPOKEN BY ELS IN CALIFORNIA: 2011-12

Language	Number of ELs
Spanish	1,173,839
Chinese	33,151
Vietnamese	33,065
Tagalog	20,203
Hmong	13,465

Source: EDFacts/Consolidated State Performance Report, 2011-12.



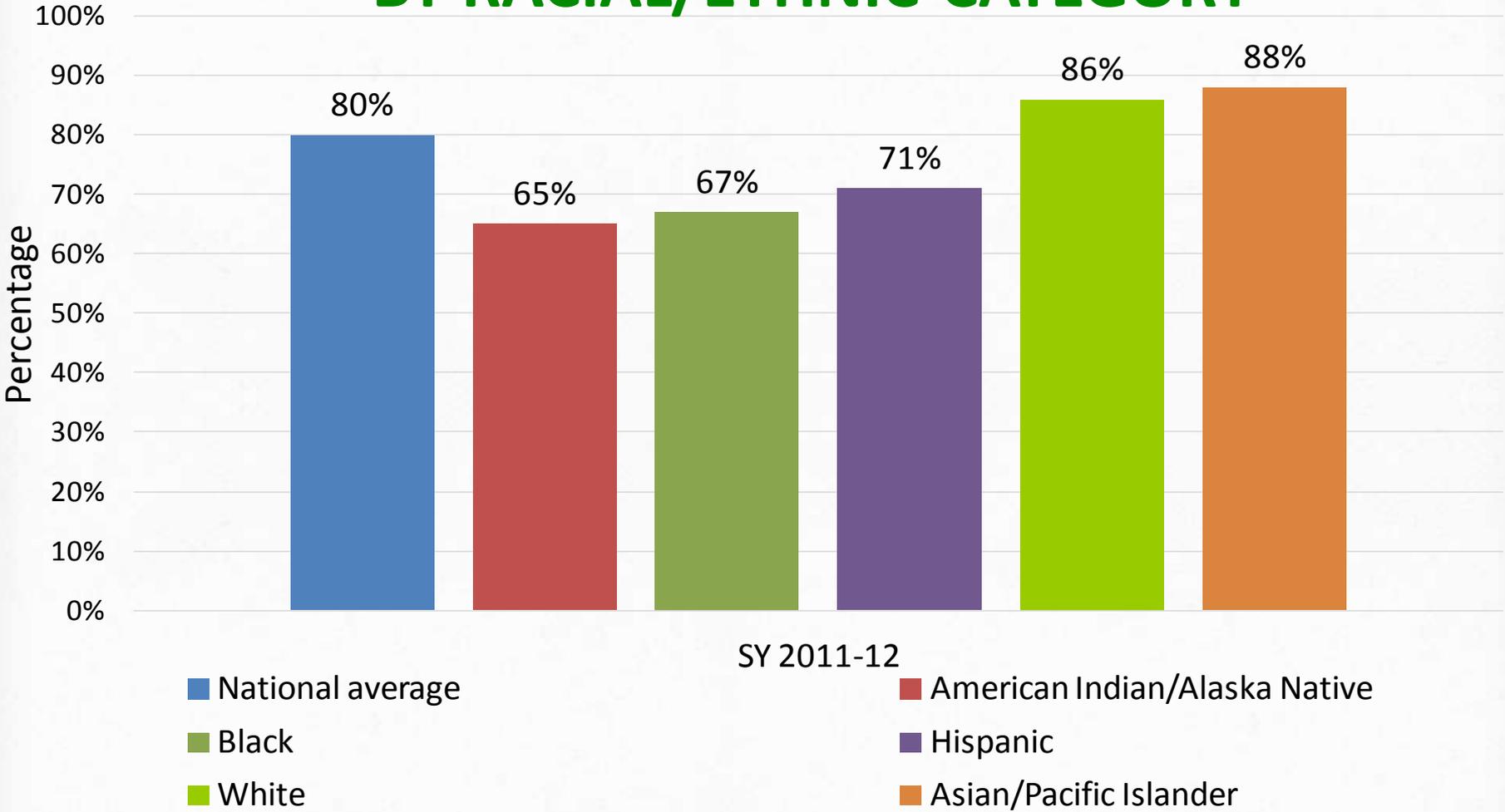
Other Facts

- **ELs are more likely to live in a low-income household**
 - **66% of ELs had a family income below 200% of the federal poverty level, compared to 37% of non-EL youths**
- **ELs are less likely to have a parent with a two-year or four-year college degree compared to 37% of non-EL youths**
 - **22% of ELs had a parent with a postsecondary degree, compared to 44% of students from English-speaking households**
- **EL and immigrant populations also have lower high school graduation rates and higher dropout rates.**
 - **The 2011-2012 the nationwide dropout rate for EL students was 41%, compared to 20% for native-born students.**

References

- MPI. (2012). Analysis of the U.S. Census Bureau's American Community Survey .
- U.S. Department of Education, National Center for Education Statistics. (2009). The Condition of Education.
- <http://nces.ed.gov/programs/coe/2011-2012/section3/indicator20.asp>

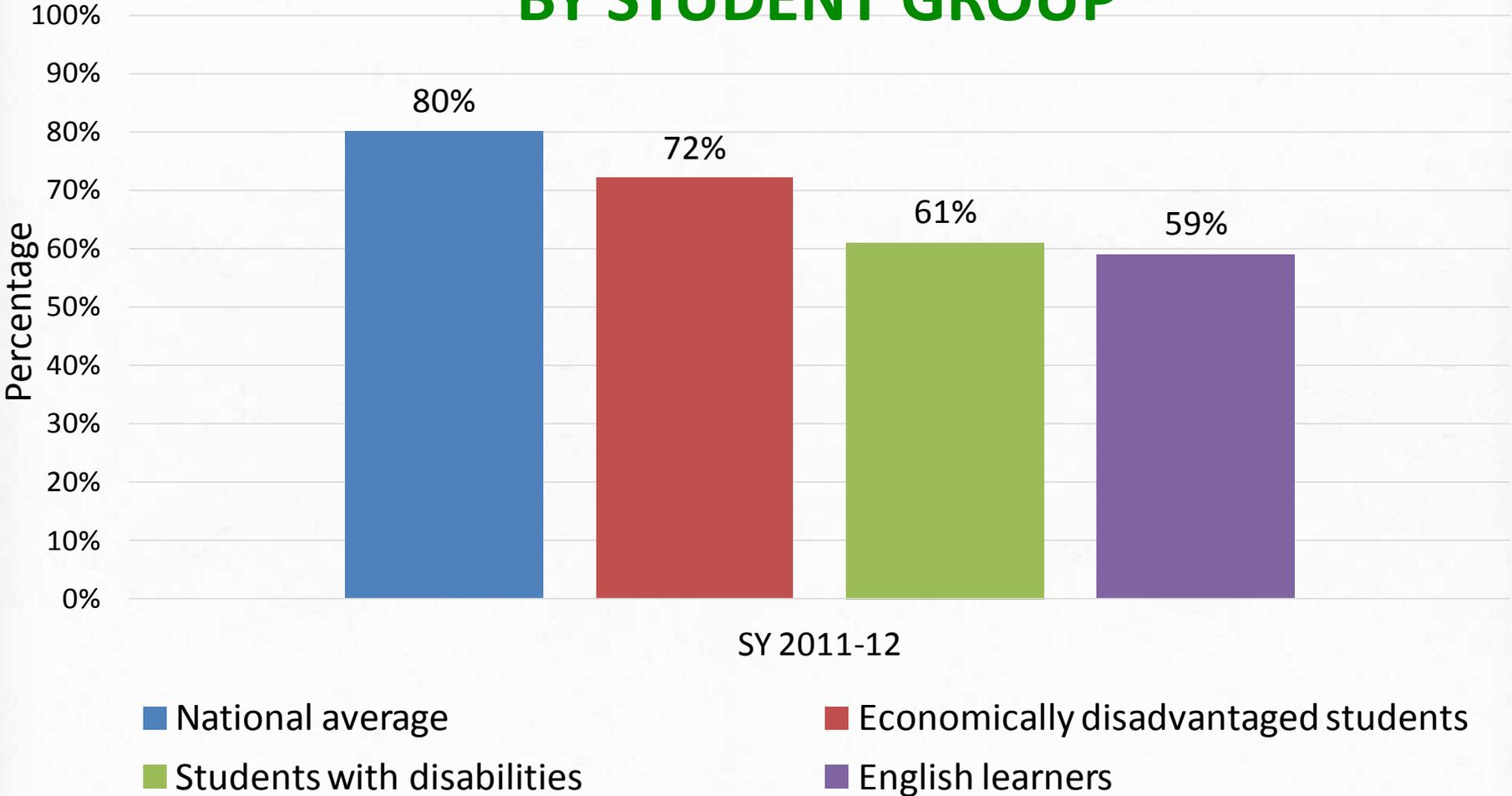
HIGH SCHOOL GRADUATION RATES BY RACIAL/ETHNIC CATEGORY



Source: Stetser, M.C., and Stillwell, R. (2014). *Public High School Four-Year On-Time Graduation Rates and Event Dropout Rates: School Years 2010-11 and 2011-12*. First Look (NCES 2014-391). U.S. Department of Education. Washington, DC: National Center for Education Statistics.



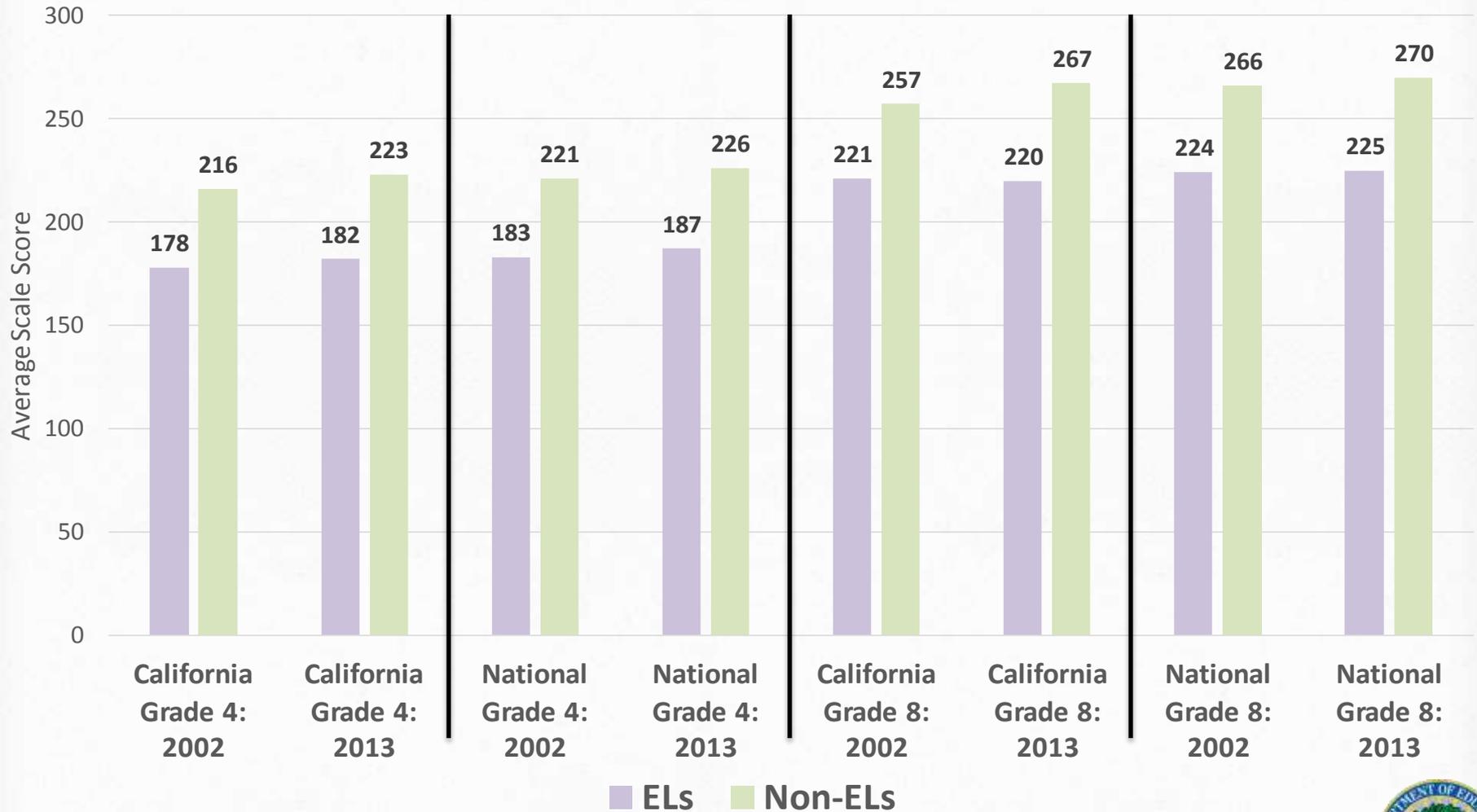
HIGH SCHOOL GRADUATION RATES BY STUDENT GROUP



Source: Stetser, M.C., and Stillwell, R. (2014). *Public High School Four-Year On-Time Graduation Rates and Event Dropout Rates: School Years 2010-11 and 2011-12*. First Look (NCES 2014-391). U.S. Department of Education. Washington, DC: National Center for Education Statistics.



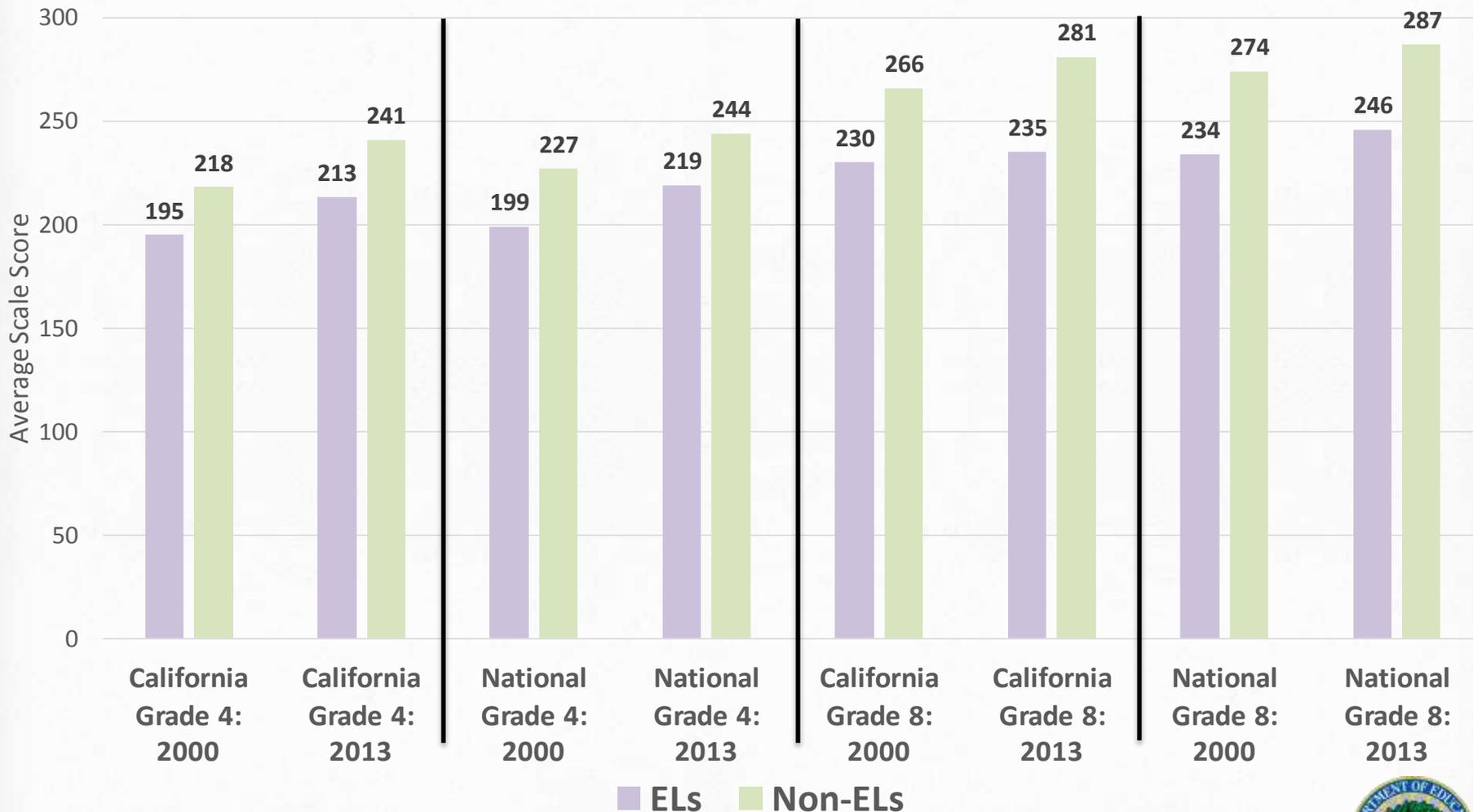
PERFORMANCE OF ELs VS. NON-ELs IN READING ON NAEP BETWEEN 2002 AND 2013



Source: U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress (NAEP), 2002 and 2013 Mathematics Assessments.



PERFORMANCE OF ELs VS. NON-ELs IN MATHEMATICS ON NAEP BETWEEN 2000 AND 2013



Source: U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress (NAEP), 2000 and 2013 Mathematics Assessments.



WHAT OTHER DATA CAN HELP

To assess whether there is equal participation under the EEOA and meaningful participation under Title VI, we consider whether ELs and former ELs are:

- Exiting within a reasonable period of time;
- Performing as well as their never-EL peers;
- Successfully participating in essentially all aspects of the school's curriculum without the use of simplified English materials; and
- Dropping out or being retained-in-grade at rates similar to those of their never-EL peers.



RELEVANT CRDC DATA

- % of ELs in high school v. their % retained in HS and compare to % of non-ELs retained in HS
- % of ELs in high school v. their % with an out-of-school suspension (OSS), and compare to % of non-EL with OSS
- % of ELs in district v. their % among SWDs and compare the % of ELs with disabilities v. % of non-ELs with disabilities

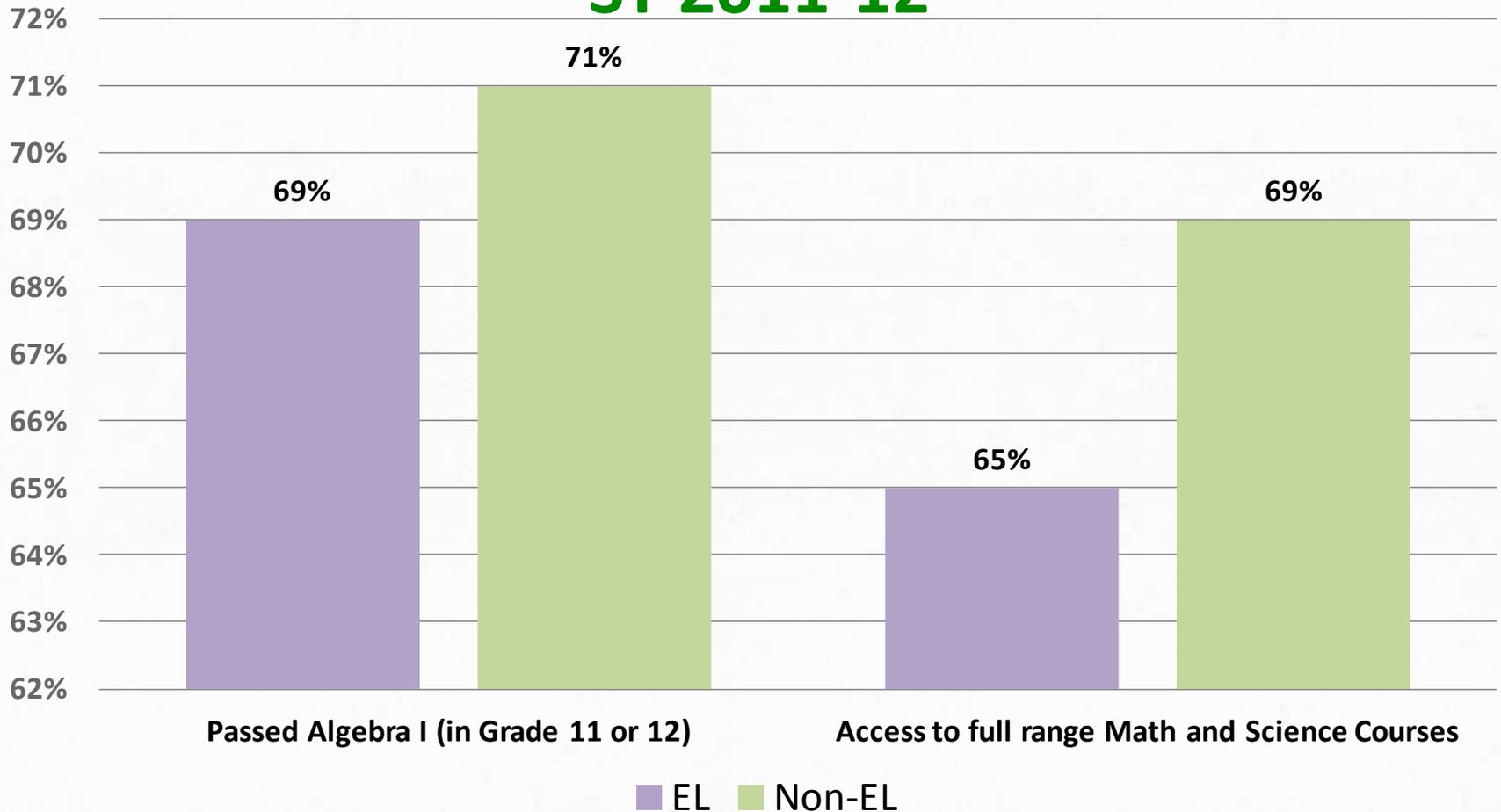


RELEVANT CRDC DATA, Continued

- % of ELs v. % non-ELs enrolled in GT programs and compare to the % of non-ELs in GT programs
- % of ELs in high school v. their % in AP courses and compare to the % of non-ELs in AP courses
- % of ELs in the district v. their % in Algebra I and compare to the % of non-ELs in Algebra I



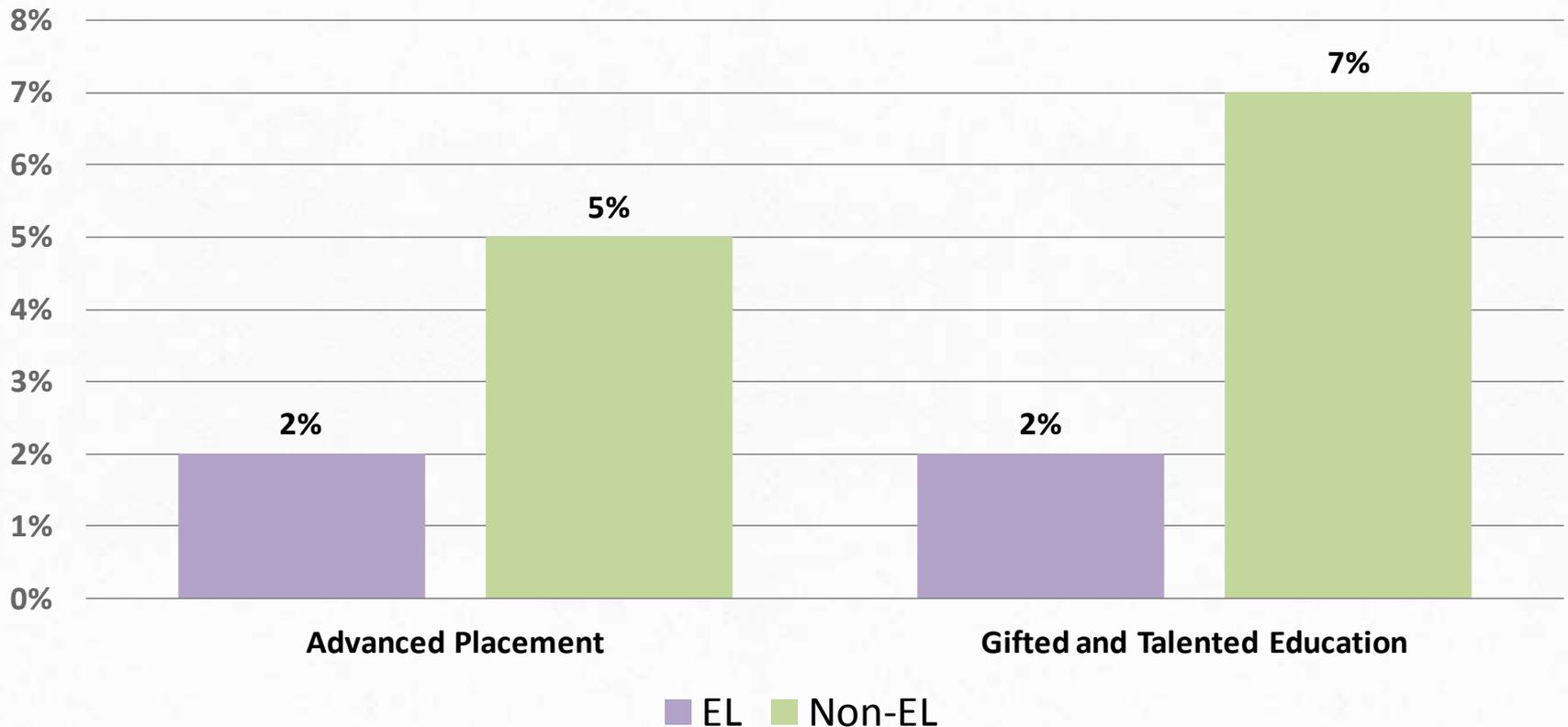
ALGEBRA I PERFORMANCE AND ACCESS TO A FULL RANGE OF MATH AND SCIENCE COURSES: SY 2011-12



Source: U.S. Department of Education Office for Civil Rights, Civil Rights Data Collection.
March 2014.



PERCENTAGE OF ELs AND NON-ELs PARTICIPATING IN COLLEGE AND CAREER READINESS RELATED PROGRAMS: SY 2011-12

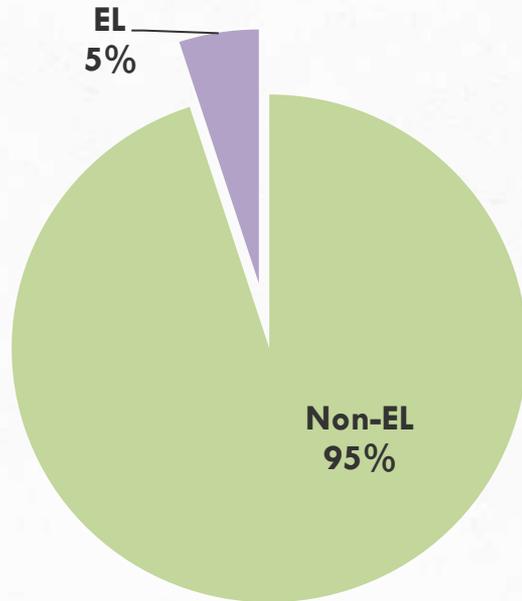


Source: U.S. Department of Education Office for Civil Rights, Civil Rights Data Collection, March 2014.



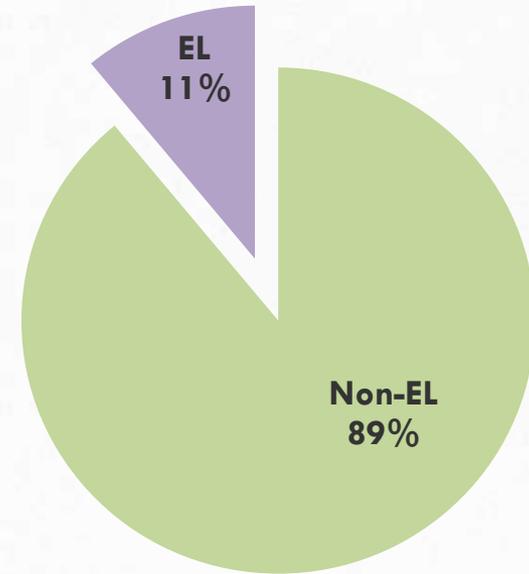
ENROLLMENT AND RETENTION PERCENTAGES OF ELs IN HIGH SCHOOL: 2011-12

Students Enrolled in High School (9-12)



16 million high school students

Students Retained in High School(9-12)

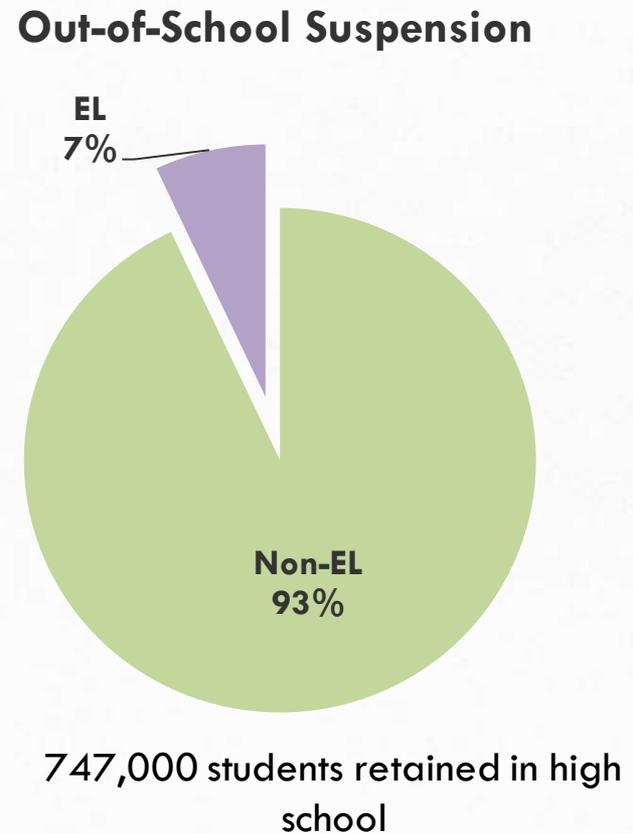
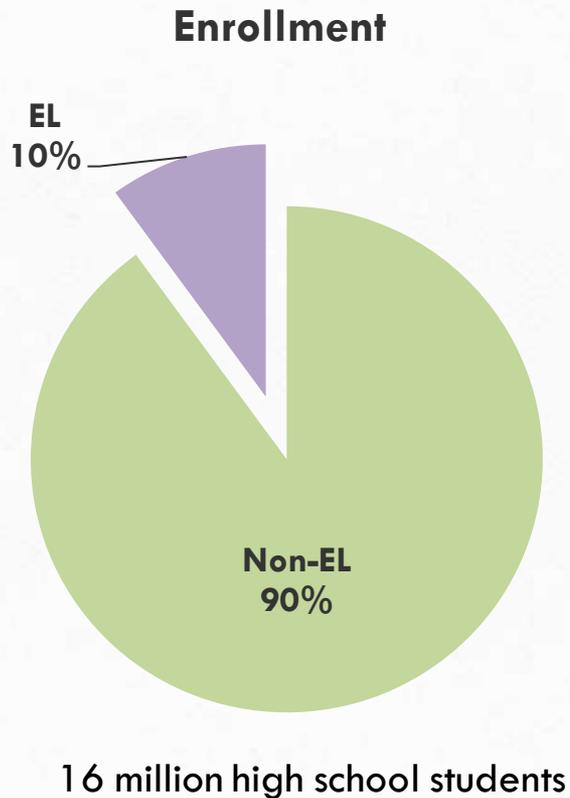


747,000 students retained in high school

Source: U.S. Department of Education Office for Civil Rights, Civil Rights Data Collection: Data Snapshot (College and Career Readiness). March 2014.



PERCENTAGE OF HIGH SCHOOL ELs ENROLLED AND RECEIVING OUT-OF-SCHOOL SUSPENSION: 2011-12

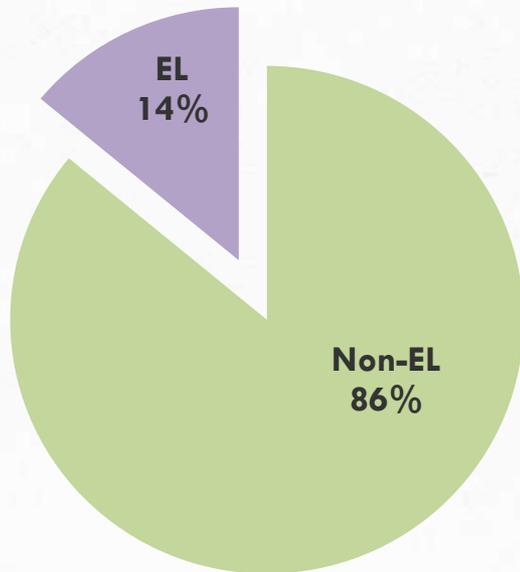


Source: U.S. Department of Education Office for Civil Rights, Civil Rights Data Collection: Data Snapshot (Early Childhood). March 2014.



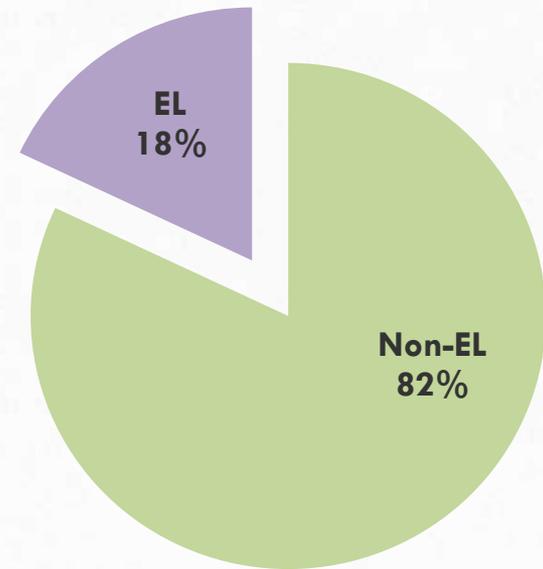
ENROLLMENT AND RETENTION PERCENTAGES OF ELs IN ELEMENTARY SCHOOL: 2011-12

Students Enrolled in Elementary School (K-6)



22 million elementary school students

Students Retained in Elementary Schools (K-6)

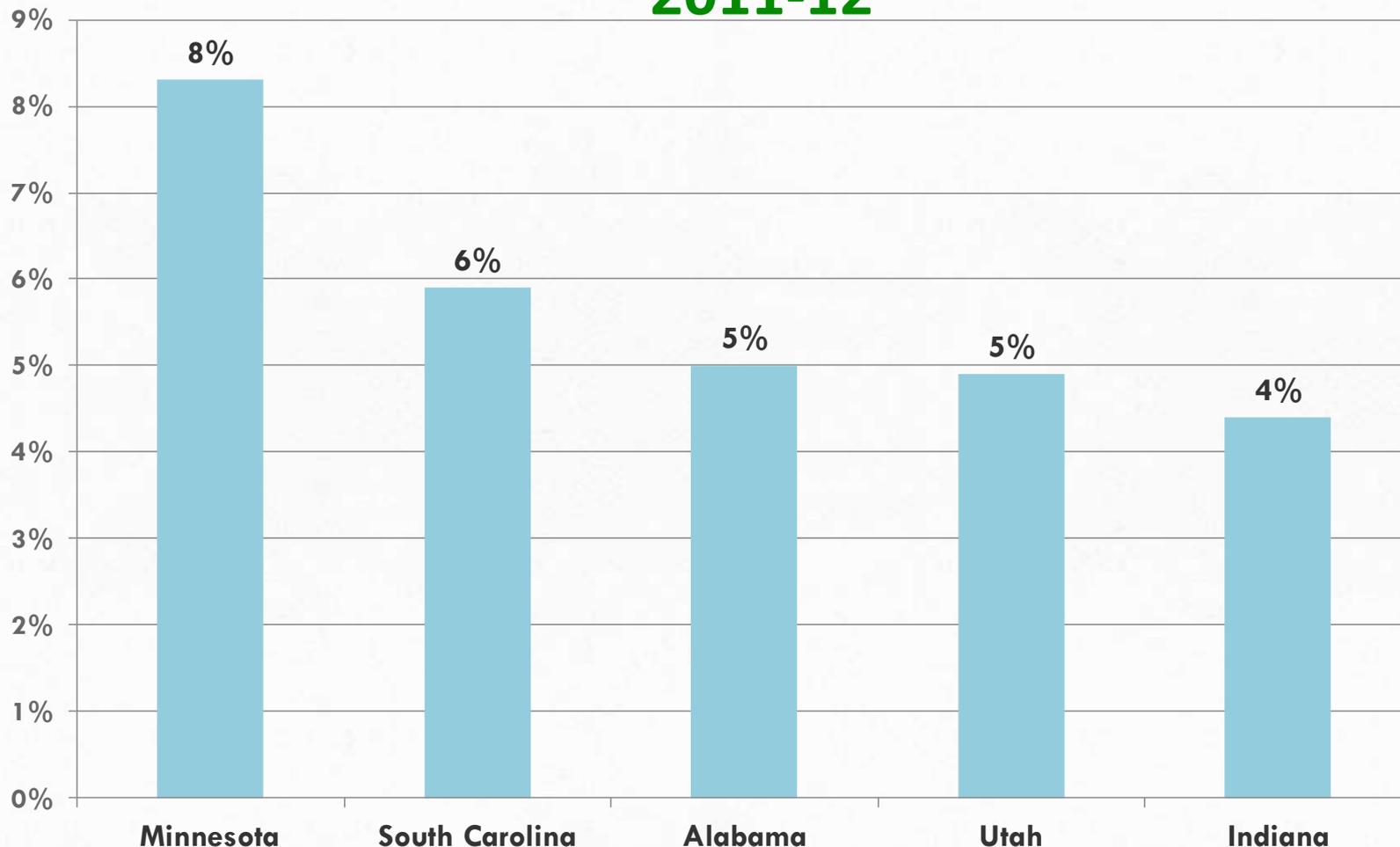


450,000 students retained in elementary school

Source: U.S. Department of Education Office for Civil Rights, Civil Rights Data Collection: Data Snapshot (College and Career Readiness). March 2014.



STATES WITH THE HIGHEST PERCENTAGE OF EL STUDENTS IN GIFTED AND TALENTED PROGRAMS: 2011-12

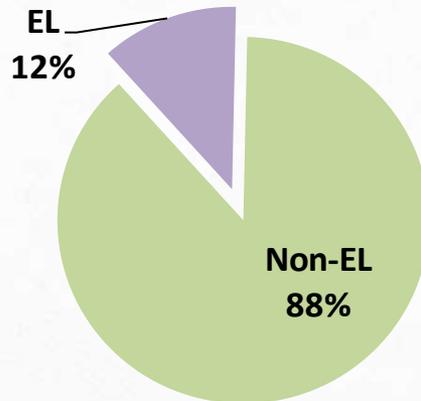


Source: U.S. Department of Education Office for Civil Rights, Civil Rights Data Collection: Data Snapshot (College and Career Readiness). March 2014.



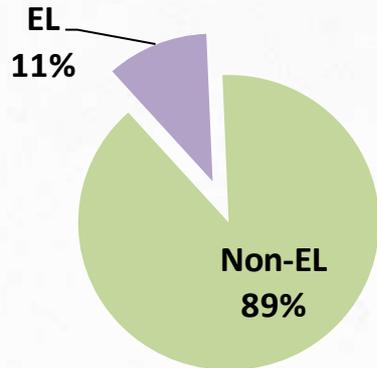
PRESCHOOL DISCIPLINE: 2011-12

Preschool Enrollment



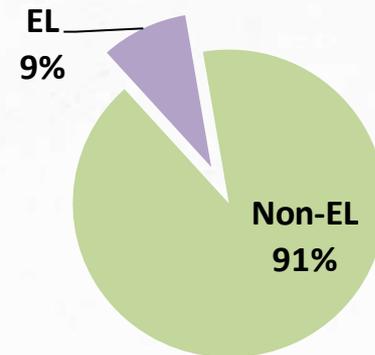
1 million preschool students

Out-of-school suspension (single)



5,000 preschool students receiving one out-of-school suspension

Out-of-school suspension (multiple)



2,500 preschool students receiving more than one out-of-school suspension

Source: U.S. Department of Education Office for Civil Rights, Civil Rights Data Collection: Data Snapshot (Early Childhood). March 2014.



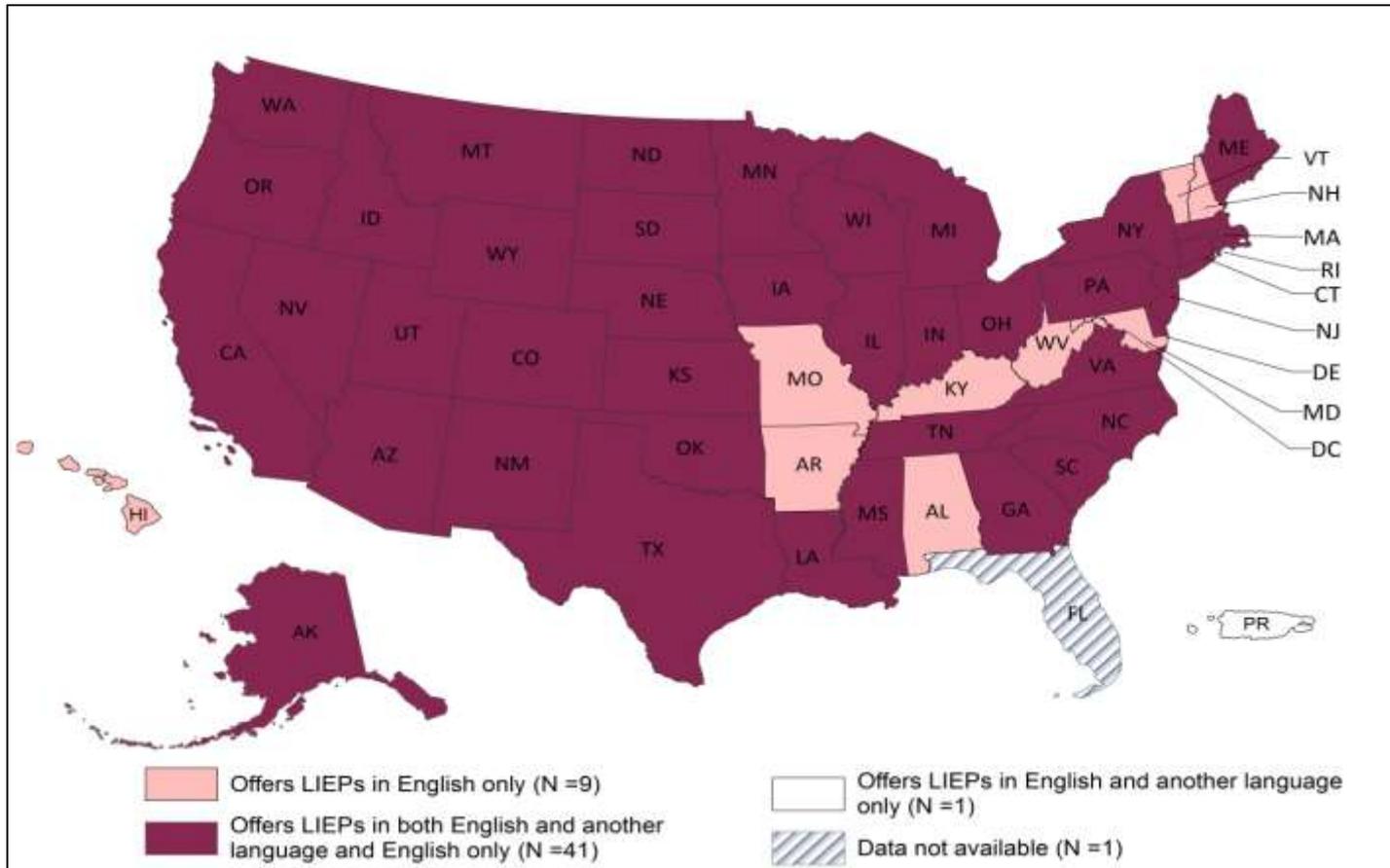
STATES WITH HIGHEST PERCENTAGE OF ELs IN PUBLIC PRESCHOOL: 2011-12

State	Percentage
Texas	36%
Illinois	19%
Florida	18%
California	15%
Oregon	15%

Source: U.S. Department of Education Office for Civil Rights, Civil Rights Data Collection: Data Snapshot (Early Childhood). March 21, 2014.



STATES BY TYPES OF LIEPS OFFERED: SY 2011-12



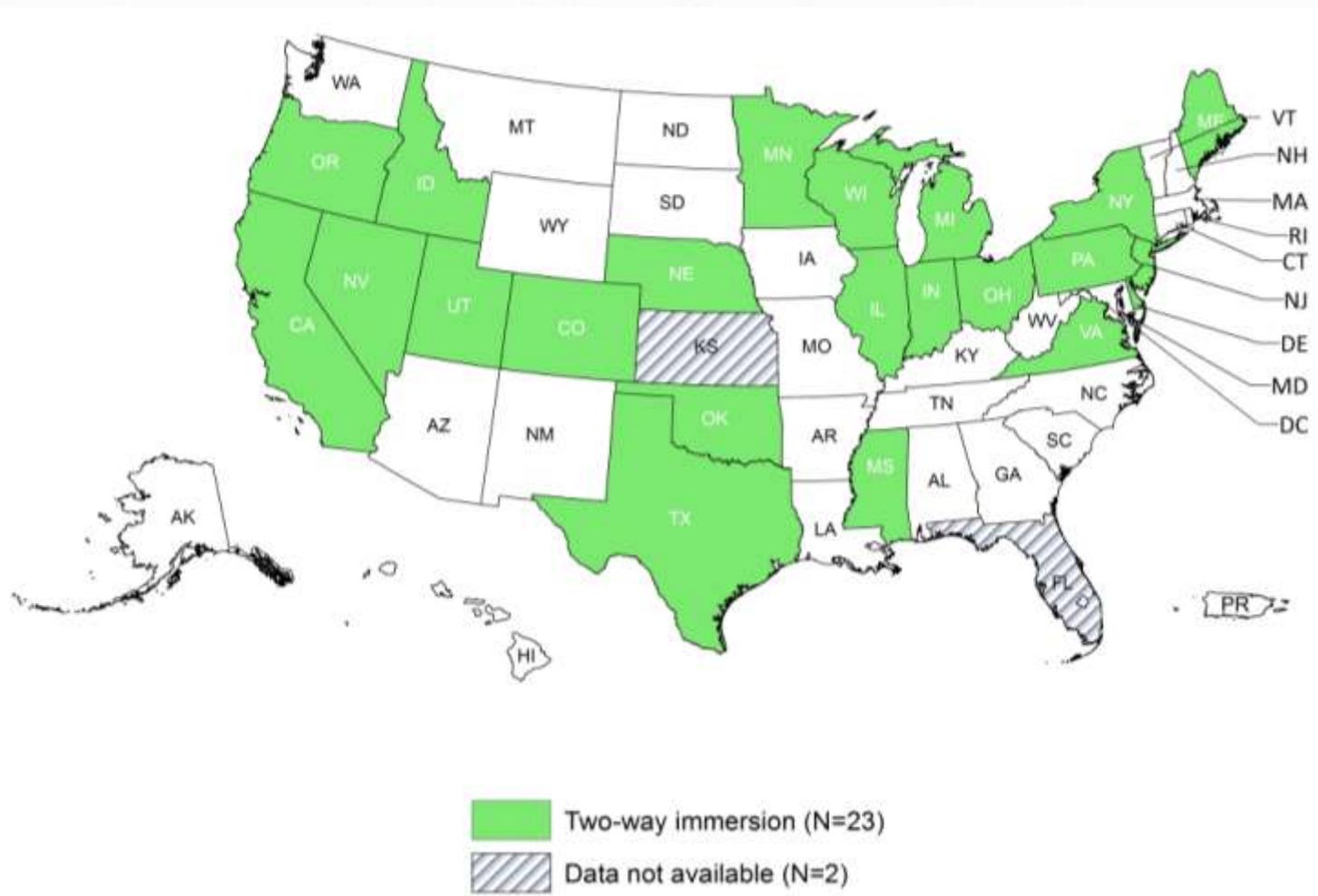
NUMBER OF STATES WITH DUAL LANGUAGE AND TWO-WAY IMMERSION PROGRAMS

Type of Program	States (n)	Top Languages of Instruction (n)
Dual Language	38	Spanish (37) French (8) Chinese (7) Russian (4)
Two-Way Immersion	23	Spanish (21) Chinese (4) French (3) Italian (2) and Mandarin (2)

Source: ED Facts/Consolidated State Performance Report, 2011-12.



STATES OFFERING TWO-WAY IMMERSION PROGRAMS: 2011-12



Source: EDFacts/Consolidated State Performance Report, 2011-12.



ENFORCEMENT CHALLENGES

414 U.S. 563: LAU VS. NICHOLS

EXACTLY WHAT CONSTITUTES
DISCRIMINATION?

YEAR: 1971
BACKSTORY:
INTEGRATION OF PRIMARILY ENGLISH -
SPEAKING CALIFORNIA SCHOOL DISTRICT
WITH CHINESE STUDENTS MAKES
EDUCATIONAL COMPETITIVENESS AMONG
MINORITIES DIFFICULT DUE TO THEM BEING
DENIED INSTRUCTION IN ENGLISH



"There is no equality of treatment merely by providing Chinese-speaking students with the same facilities, textbooks, teachers and curriculum, for students who do not understand English are effectively foreclosed from any meaningful education." - William O. Douglas



Figure 1: Historical Photograph of Children of the Mission 7th St. Chinese Day School
Barton Davis

The Premise:
Is the denial of
instruction in English a
form of discrimination in
violation of the Civil
Rights Act of 1964?



Supreme Court Position:

Majority: The school system should find ways to instruct Chinese students effectively, disregarding the language barrier. Not providing them instruction in English is in violation of the 14th Amendment.



OUR COMMON GOALS

- Ensuring that ELs receive a quality education
- Protecting ELs' civil rights so that they are not the victims of discrimination and harassment
- Promoting a more tolerant educational culture that values inclusion of students of different linguistic and ethnic backgrounds
- Working collaboratively to achieve common goals



SIMILARITIES AMONG TITLE III, EEOA, AND TITLE VI

- The purpose of Title III Part A is to help ensure that children and youth who are EL, Native American and/or immigrants, attain English language proficiency, develop high levels of academic attainment in English, and meet the same challenging State academic standards that all children are expected to meet.
- Similar to Title VI, the purpose of §1703(f) of the EEOA is to ensure that states and school districts don't discriminate against ELs by requiring these agencies to take appropriate action to overcome ELs' language barriers so that they can participate equally in instructional programs



SIMILARITIES AMONG TITLE III, EEOA, AND TITLE VI

- Under Title III, states are required to show that EL students are progressing in their proficiency of the English language by meeting annual measurable achievement objectives (AMAOs) (*ESEA*, § 3122(b)).
- Under Title III, states are required to demonstrate that students are proficient in state content and achievement standards in mathematics, reading or language arts, and science (*ESEA*, § 1111(b)(2)(B)).
- Under EEOA and Title VI, states and districts must evaluate whether ELL programs enable ELs to achieve proficiency in English and state content standards. Like Title III, this requires monitoring their progress in the EL program and after they have exited.



PRONG 3: THE RESULTS OF THE ELL PROGRAM

- ELs “cannot be permitted to incur irreparable academic deficits” while they master English.
- The only way to ensure this does not happen is to measure ELs’ progress in the content areas while they are in the EL program.
- Is there evidence that the EL program is “reasonably calculated to enable [EL] students to attain parity of participation in the standard instructional program within a reasonable length of time after they enter the school system?”

Castañeda, 648 F.2d at 1012.



SIMILARITIES AND DIFFERENCES BETWEEN OCR AND DOJ

- **OCR Addresses Discrimination Against ELLs under Title VI of the 1964 Civil Rights Act**
- **DOJ Shares Enforcement Authority for Title VI**
- **DOJ and Private Plaintiffs Enforce the EEOA**
- **Title VI is a funding-based civil rights statute**
- **EEOA is not a funding-based civil rights law**



SIMILARITIES BETWEEN OCR AND DOJ

- **Investigate EL-based complaints**
- **Initiate Compliance Reviews**
- **Request Data and Documents**
- **Conduct Interviews and Onsite Visits**



EXAMPLE OF A JOINT OCR-DOJ REVIEW

- **March 2010 – DOJ and OCR announce joint compliance review of Boston Public Schools (BPS)**
- **October 1, 2010 – DOJ, OCR, and BPS sign settlement agreement to address initial findings**
- **September 2011 – DOJ and OCR notify BPS of findings from comprehensive compliance review**
- **April 2012 – DOJ, OCR, and BPS sign Successor Agreement, which DOJ and OCR are monitoring**

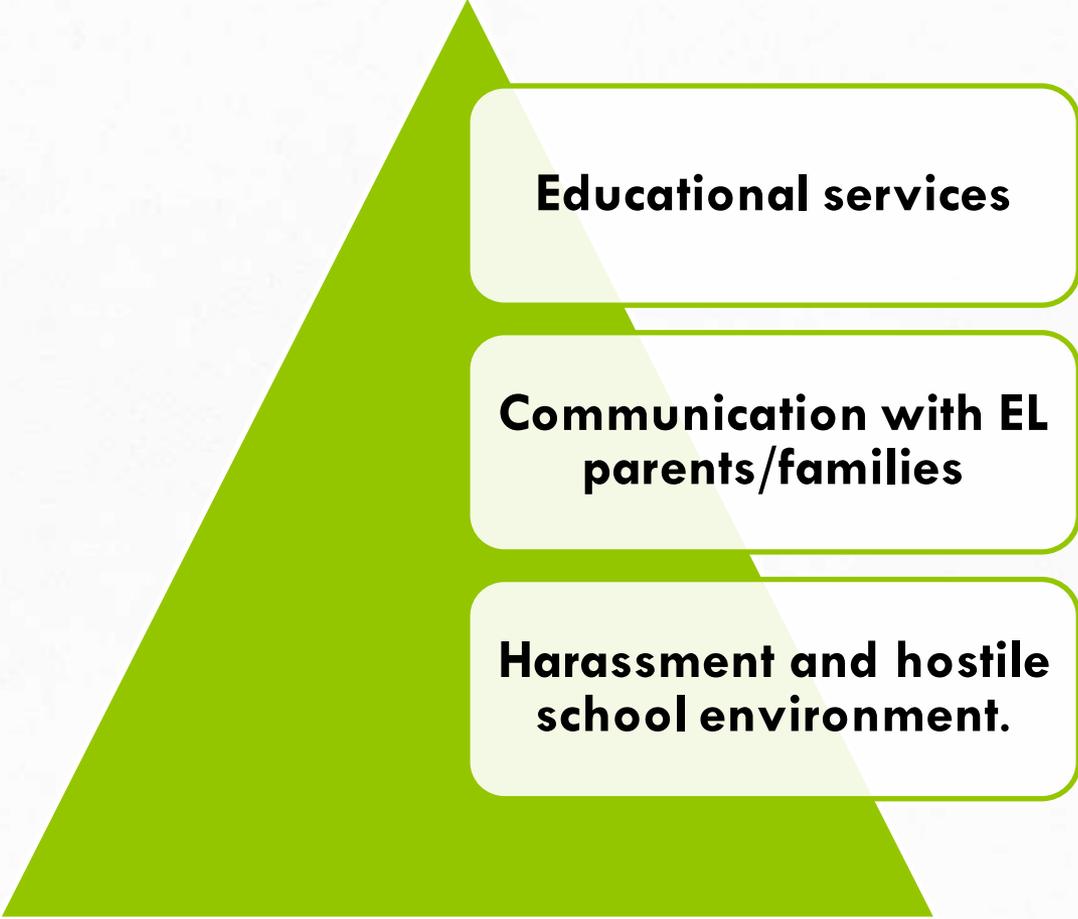


NUMBER OF OCR ENFORCEMENT CASES FY2009-August 20, 2014



OCR initiated 26 Compliance reviews involving ELL students with 99% resolved agreements

MOST COMMON COMPLAINTS



Educational services

**Communication with EL
parents/families**

**Harassment and hostile
school environment.**



COMPLIANCE REVIEWS

**OCR initiated 26
compliance reviews
since FY2009**

**99% resolved in
agreement**



Catherine Lhamon, Assistant Secretary, Office for Civil Rights

“While regrettably my schedule does not allow me to participate in the celebration of this momentous case, I am inspired by the progress that has been made since *Lau* and humbled by the work that still must be done. Forty years ago the supreme court held in *Lau* that schools must take “affirmative steps” to ensure that English language learners can participate meaningfully in their school’s educational program. The department of education’s office for civil right is committed to upholding the promise of *Lau*, and ensuring that no student is denied access to equal educational opportunity on the basis of their national origin.”



EARLY EDUCATION FOR DUAL LANGUAGE LEARNERS

PROMOTING SCHOOL READINESS AND EARLY SCHOOL SUCCESS



LINDA M. ESPINOSA



Unlocking the Research on English Learners

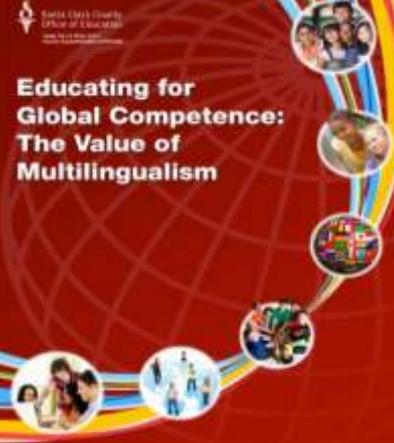
What We Know – and Don't Yet Know – about
Effective Instruction

By Claude Goldenberg



Santa Clara County
Office of Education

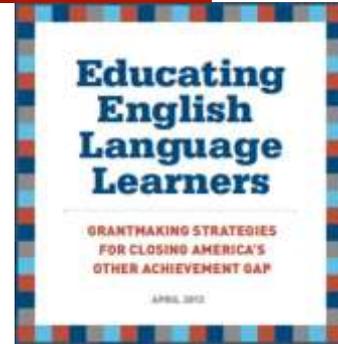
Educating for Global Competence: The Value of Multilingualism



BUENO NATIONAL POLICY CENTER FOR BILINGUAL & MULTICULTURAL EDUCATION

Opportunity Lost

The Promise of Equal and Effective
Education for Emerging Bilingual Students
In the Obama Administration



grantmakers|education

Reparable Harm

Fulfilling the Unkept Promise of Educational
Opportunity for California's
Long Term English Learners

Succeeding With
English Language Learners:
Lessons Learned from the Great City Schools



English Language Learners: A Renewed Focus

Libia S. Gil, Ph.D.
Assistant Deputy Secretary and Director,
Office of English Language Acquisition
U.S. Department of Education

U.S. DEPARTMENT OF EDUCATION

INVESTING IN ENGLISH LEARNERS

- **ESEA Reauthorization - Title III**
- **Investing in Innovation (i3)**
- **School Improvement Grant (SIG)**
- **Adult English Literacy/Civic Ed. State Grants**
- **Promise Neighborhoods**
- **Race to the Top (RTT)**
- **My Brother's Keeper Initiative**
- **Opportunity Proposal**



OFFICE OF ENGLISH LANGUAGE ACQUISITION

OELA – TITLE III

- Policy
- Research
- Formula State Grants – Office of Elem & Sec Ed.
- Discretionary Grants-Teacher Preparation
 - National Professional Development
 - Native American and Alaska Native Children in School
- Technical Assistance
 - National Clearinghouse for English Language Acquisition (NCELA)



Moving Forward

- **How can we elevate an English Learner focus and integrate it with all ed initiatives?**
- **What supports are needed to ensure successful outcomes with a clearly defined performance system?**
- **How do we strengthen biliteracy/multiliteracy goals?**



MOVING FORWARD

A FEW THOUGHTS

Knowledge Development, Practice and Policy

- Establish a national knowledge management system
- Establish and invest in research priorities
- Identify and facilitate adoption of effective practices
- Integrate across all areas – Early learning; higher education; technology; charters; Teacher effectiveness; leadership development; technology ; etc.

Communication, Collaboration and Coalitions

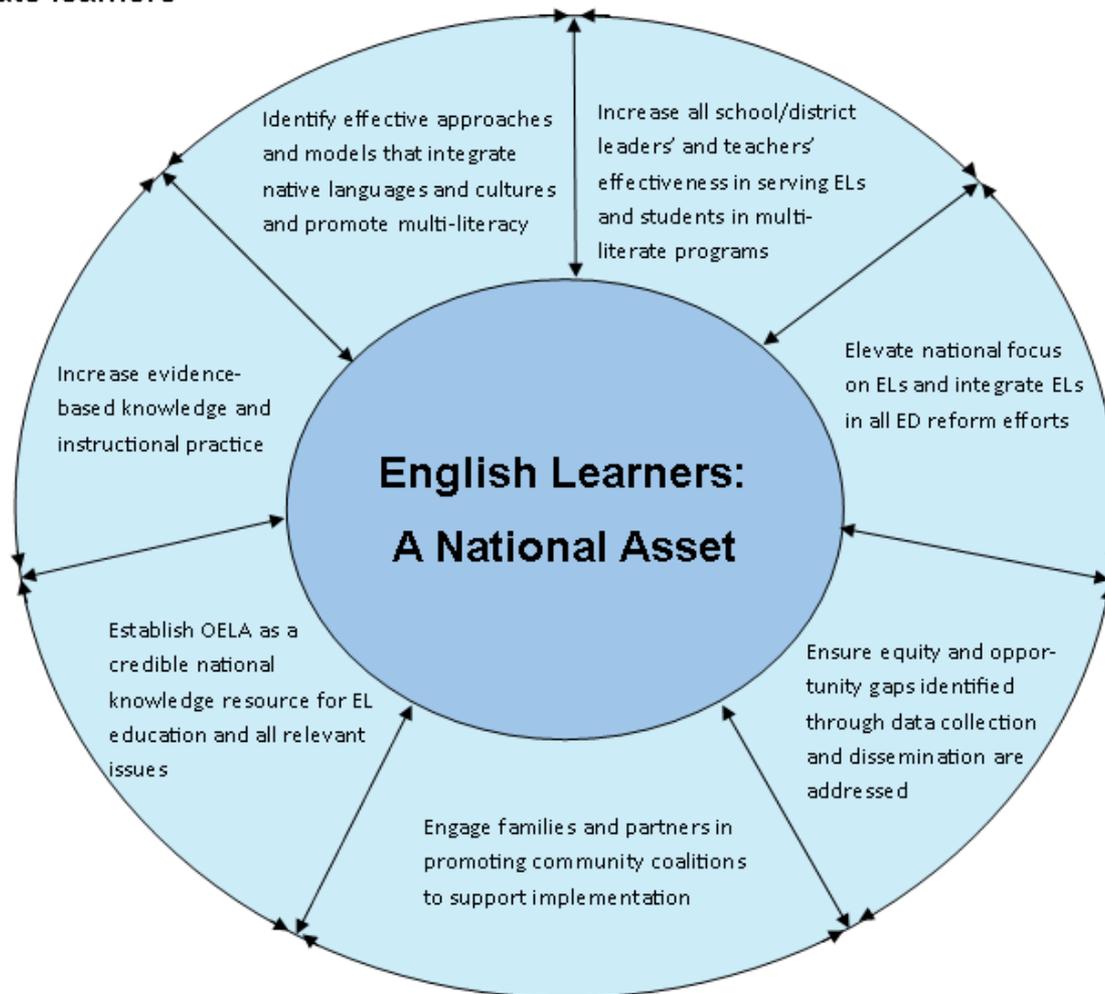
- Recognize EL assets and use strength based language
- Convene a coalition(s) of national partners
- Publish joint briefs; Guidance publications; videos, webinars, etc.
- Engage families, communities and other agencies
- Promote policy and practice to support Biliteracy goals



ED's Strategy for English Learners

Goal 1: Ensure all English Learners are college and career ready for a global society by building on students' linguistic and cultural assets

Goal 2: Ensure that all education policies and initiatives successfully address opportunities for English Learners and multi-literate learners



“My message to you today is that K-12 schools and higher education institutions must be part of the solution to our national language gap. The president and I want every child to have a world-class education – and today more than ever a world-class education requires students to be able to speak and read languages in addition to English. The department of education plays an important role in supporting second-language instruction starting in the earliest grades and to ensure that students are engaged in language all the way through high school.”

- Arne Duncan, U.S. Secretary of Education



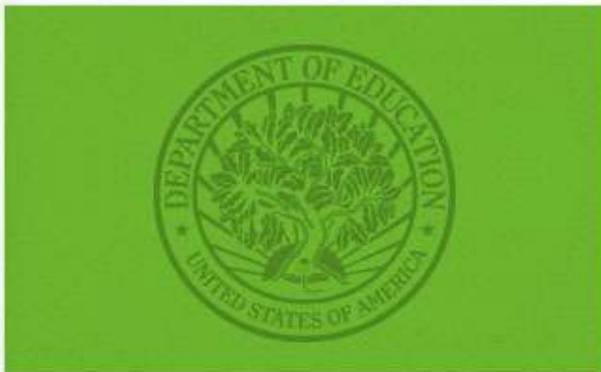
A GLOBAL FUTURE VIDEO





Questions? Suggestions?

libia.gil@ed.gov



U.S. DEPARTMENT
OF EDUCATION