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## Rights of English Language Learners (ELL) & Families with Limited English Proficiency

### Right to Attend School

- All children in Pennsylvania, including immigrant and migrant students, are entitled to a **free public school education**<sup>1</sup> until age 21 regardless of their proficiency in English.
- Every child must be enrolled no later than 5 business days from the date the family submits four mandatory documents (*i.e.*, proof of age, residency, immunizations, and an Act 26 Affidavit).<sup>2</sup>
- A school may not ask about the immigration status of students or their families.<sup>3</sup>
- Students enrolling for the first time must complete a **Home Language Survey** to identify needs.

### Right to Be Free From Bullying & Harassment in School

- Students cannot be discriminated against based on race, color, national origin, or religion.<sup>4</sup>
- Schools must respond appropriately to bullying of ELL students or may be violating one or more civil rights laws. If harassment persists, you can file a formal complaint with [U.S. Department of Education's Office for Civil Rights](#) or [U.S. Department of Justice's Civil Rights Division](#).

### Rights of English Language Learners (ELLs) in School

- ELL students cannot be discriminated against and are entitled to equal access to services.<sup>5</sup>
- **The Right to Learn English:** ELLs must be tested to determine English proficiency and placed in the appropriate English as a Second Language (ESL) program. Planned instruction must be provided by a qualified ESL/Bilingual teacher. State guidance recommends students receive the following hours of ESL: No English = 2-3 hours; Beginner = 2 hours; Intermediate = 1-1.5 hours; Advanced = 1 hour.
  - ELL students must be evaluated to ensure they are making progress in learning English.
  - School districts must apply the same state exit criteria when exiting ELLs from the language instructional program. Students may not be exited based on oral proficiency alone, but proficiency in academic reading and writing.
  - In addition to ESL, ELLs have a legal right to comprehensible instruction in all content areas from all teachers. Teachers must adapt content and instructional method to the needs of ELLs.
  - Students may not be retained in a grade based solely on lack of English language proficiency.
- **The Right to Equal Access:** ELLs must have access to all services offered to other students. Under the YS Stipulation<sup>6</sup> schools provide supports where needed so students access to these opportunities. This includes specialized programs, special admit schools, counseling, gifted education, and extracurricular activities. The *LeGare*<sup>7</sup> consent decree, which ensures equal access to all school programs for students with disabilities, also applies to ELLs by resolution of the School Reform Commission.
- ELL students with special education needs must receive all legal protections and entitlements of the *Individuals with Disabilities Education Act*.<sup>8</sup> This includes the right to a "Free Appropriate Public

Education” (FAPE); the right to receive an evaluation in the student’s native language, the right to interpreter and translation services and the right to challenge a placement or denial of services.<sup>9</sup>

## Rights of Families of English Language Learners

- Schools must communicate with parents with limited English proficiency in their preferred language and must ensure parent participation by providing interpretation and translation services (*e.g.*, parent-teacher conferences, IEP meetings and disciplinary hearings).
- Schools **cannot** require families to provide their own interpreter or use their child in that role.

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<sup>1</sup> See 24 P.S. § 1301, 1302 and 22 Pa. Code § 11.11(a)(1).

<sup>2</sup> See 22 Pa. Code § 11.11(b)-(c).

<sup>3</sup> *Plyler v. Doe*, 457 U.S. 202 (1982)

<sup>4</sup> See Title IV and Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972

<sup>5</sup> Equal Education Opportunity Act 20 U.S.C. § 1703 *et seq*; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq*.

<sup>6</sup> *Y.S. et al., v. The School District of Philadelphia*, Civil Action No. 85-6924 (E.D. Pa. 1985).

<sup>7</sup> *Lamar Legare, et al., v. School District of Philadelphia*, Civil Action No. 94-CV-4243 (E.D. Pa. 1994).

<sup>8</sup> 42 U.S.C. § 2000d *et seq*.

<sup>9</sup> See *e.g.*, 20 U.S.C.A. § 1415(b)(4) .34 CFR § 300.322(e) and (f); 34 CFR§ 300.503(c)(1)(ii).