

## Rights of English Learners & Limited English Proficient Parents

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English learners have all the same rights as other students, as well as *additional* rights and protections. Below is an overview of the rights of English learners (ELs) and parents or guardians who are “limited English proficient” (LEP). A person is limited English proficient if the person does not speak English as their primary language and has a limited ability to read, speak, write, or understand English. An English learner is a student whose first language is not English and is in the process of learning English.

### THE RIGHT TO ATTEND SCHOOL

- All students who are LEP or ELs have the right to attend public school – including charter and magnet schools – regardless of their immigration status or language ability.<sup>i</sup>
- **Schools cannot ask families or students about their immigration status.** Families do not have to provide immigration documents or a Social Security number.<sup>ii</sup>
- Families need 4 documents to enroll in school – proof of age, residency, immunizations, and an “Act 26 Affidavit” about the student’s disciplinary record. After receiving these documents, the school must enroll the child within 5 business days.<sup>iii</sup> If you are having trouble enrolling your child, see ELC’s fact sheet on the [Enrollment Complaint Process](#).
- If a child is homeless or in foster care, the school must enroll the child *immediately*, even if she does not have the 4 documents described above.<sup>iv</sup>
- Newly enrolling students must complete a Home Language Survey to identify their language needs.<sup>v</sup> The language survey will ask about what language is spoken in a child’s home.
- EL students are entitled to testing accommodations on state assessments.

### THE RIGHT TO LEARN ENGLISH

- Schools are required to teach students who do not know English how to read, write, speak, and understand English. Schools must do this *in addition* to teaching students history, math, science, and all other grade-level classes.<sup>vi</sup>
- Schools must use objective tests to determine if a student needs help learning English.<sup>vii</sup>
- Schools are not required to use a specific program to teach ELs English, but the program they use must be sound in theory and effective in practice.<sup>viii</sup>
- Schools must tell parents if their child needs language instruction and what program the school will use to help the child learn English.<sup>ix</sup> Parents should ask about the availability of programs for newly arrived immigrants, often called “Newcomer Programs,” which offer special programming.
- Parents of ELs have the right to refuse separate, specialized programs and services that may be a part of language instruction programs. A parent’s decision must be informed and voluntary. School staff may not influence these decisions in any way.
- Language instruction (*i.e.* English as a Second Language (ESL) or Bilingual Education) must be delivered by a licensed ESL teacher. This program must be adequately resourced and designed to help students learn English quickly.<sup>x</sup>

- Non-ESL teachers must use language instruction techniques in all classes so that ELs can understand the general curriculum and learn English as quickly as possible.<sup>xi</sup>
- An EL cannot be retained in a grade based solely on the student's lack of English proficiency.

### THE RIGHTS OF ELs WHO HAVE EXITED FROM ESL

- Once a student is deemed proficient in English, she will be exited from the school's ESL program.
- Students must meet certain state standards to exit ESL. Students must be proficient in reading, writing, speaking, and understanding English. Oral proficiency alone is not enough.<sup>xii</sup>
- After a student is exited from ESL, the school must monitor her progress for two years. If the student continues to struggle due to a language barrier, the school will re-designate her as an EL and provide her with supports and services to learn English.<sup>xiii</sup>

### THE RIGHT TO SPECIAL EDUCATION SERVICES

- ELs with disabilities have the right to receive *both* special education and ESL services.<sup>xiv</sup>
- There is no waiting period for evaluating an EL for special education.<sup>xv</sup> After receiving consent from the parent, the school must complete the evaluation in 60 days.<sup>xvi</sup>
- Schools must make every effort to evaluate ELs in their native language.<sup>xvii</sup>
- An EL's special education plan must consider her language needs.<sup>xviii</sup> The team that creates this plan must include an ESL teacher.<sup>xix</sup>
- Interpreters must be provided by the school for IEP meetings, and special education documents must be provided in a language the parent can understand.<sup>xx</sup>

### THE RIGHT TO PARTICIPATE IN EXTRACURRICULAR ACTIVITIES, GIFTED CLASSES, AND SPECIAL PROGRAMS

- ELs must have access to all services offered to other students, including special admission schools, counseling, gifted classes, sports, and extracurricular activities.<sup>xxi</sup>
- Schools must ensure that testing procedures for specialized programs do not screen out ELs solely because they are not fluent in English.<sup>xxii</sup>

### THE RIGHT TO TRANSLATION AND INTERPRETATION

- School must share information with limited English proficient (LEP) parents in a language they can understand. This includes information about enrollment, ESL services, the child's academic performance, disciplinary policies, special education services, parent-teacher conferences, and information about special activities and programs.<sup>xxiii</sup>
- Schools must provide free interpretation (oral) or translation (written) services by a *trained* translator. Schools should *never* require a family to provide their own interpreter or ask the child or a family member to provide translation.<sup>xxiv</sup>
- Districts must reach out to LEP parents to inform them of how they can be involved in their child's education.<sup>xxv</sup>

### THE RIGHT TO BE FREE FROM BULLYING AND HARASSMENT

- ELs have the right to be free from bullying and harassment, including negative treatment based on race, religion, gender, ethnicity, national origin, immigration status, or language.<sup>xxv</sup>

- Schools must take steps to protect students who are being bullied and to stop known bullies from engaging in negative behavior.<sup>xxvi</sup> For more information see ELC’s guide – [“What To Do When Your Child Is Bullied or Harassed?”](#)

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, trainings, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

ELC’s publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC’s Helpline for information and advice – visit [www.elc-pa.org/contact](http://www.elc-pa.org/contact) or call 215-238-6970 (Philadelphia) or 412-258-2120 (Pittsburgh) – or contact another attorney of your choice.

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

<sup>ii</sup> *Plyler v. Doe*, 457 U.S. 202 (1982); 22 Pa. Code § 11.11(a)(1); Basic Education Circular, *Enrollment of Students*, Pennsylvania Department of Education, 3 (2009) [Hereinafter “Enrollment BEC”]

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

<sup>iv</sup> 42 U.S.C. § 11432(g)(3)(C)(1); ESEA §1111(g)(1)(E)(ii)

<sup>v</sup> Enrollment BEC, 3; *Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs*, U.S. Department of Justice & U.S. Department of Education, Office of Civil Rights, 1, available at <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-el-students-201501.pdf>

<sup>vi</sup> 22 Pa. Code §4.26; *Castaneda v. Pickard*, 648 F.2d 989, 1011 (5th Cir. 1981); *Lau v. Nichols*, 414 U.S. 563 (1974); Lhamon, Catherine E. & Gupta, Vanita, “Dear Colleague Letter” *English Learner Students and Limited English Proficient Parents* from Civil Rights Div., U.S. Dep’t of Justice & Office of Civil Rights, U.S. Dep’t of Educ., 10 (2015) [Hereinafter “Dear Colleague Letter”].

<sup>vii</sup> Dear Colleague Letter at 10-11; *OCR Compliance Review Letter to Hazleton Area SD - 03-10-5002*, U.S. Department of Education, Office of Civil Rights, 6 (2014) (Hereinafter “Hazleton Resolution Letter”); Basic Education Circular, *Educating English Learners (ELs)*, Pennsylvania Department of Education, 2 (2017) [Hereinafter “English Learner BEC”]; *English Learner Identification Procedure - Grades K-12*, Pennsylvania Department of Education, available at <https://www.education.pa.gov/Teachers%20-%20Administrators/Curriculum/English%20As%20A%20Second%20Language/Pages/Identification-Placement-Exit.aspx#.Vbt7YmXD-Uk>

<sup>viii</sup> *Castaneda v. Pickard*, 648 F.2d at 1009; *Issa v. Sch. Dist. of Lancaster*, No. CV 16-3881, 2016 WL 4493202, at \*6 (E.D. Pa. Aug. 26, 2016), *aff’d and remanded*, 847 F.3d 121 (3d Cir. 2017)

<sup>ix</sup> 20 U.S.C. § 6312(e)(3)(A)

<sup>x</sup> *Castaneda v. Pickard*, 648 F.2d at 1013; Dear Colleague Letter at 14-15; English Learner BEC at 3, 6; Hazleton Resolution Letter at 7-8, 11.

<sup>xi</sup> English Learner BEC at 2.

<sup>xii</sup> Dear Colleague Letter at 32-34; Hazleton Resolution Letter at 16; English Learner BEC at 6; *State required Reclassification, Monitoring, and Re-designation of English Learners (ELs)*, Pennsylvania Department of Education, available at <https://www.education.pa.gov/Documents/Teachers-Administrators/Curriculum/ESL/Reclassification%20Monitoring%20and%20Redesignation%20of%20ELs.pdf>

<sup>xiii</sup> English Learner BEC at 6; Dear Colleague Letter at 34

<sup>xiv</sup> Dear Colleague Letter at 25; English Learner BEC at 8.

<sup>xv</sup> Dear Colleague Letter at 25; English Learner BEC at 8

<sup>xvi</sup> 34 CFR §300.301(c)(1)

<sup>xvii</sup> 20 U.S. Code § 1412(6)(B); 20 U.S. Code § 1414(b)(3)(A); 34 C.F.R. § 300.304(c)(1)(ii)

<sup>xviii</sup> 20 U.S.C. § 1414(d)(3)(B)(ii); 34 C.F.R. § 300.324(a)(2)(ii)

<sup>xix</sup> Dear Colleague Letter at 27; English Learner BEC at 8

<sup>xx</sup> 20 U.S. Code §§ 1415(b)(4), 1415(d)(2); 34 C.F.R. §§ 300.503(c)(1), 300.503(c)(2); 22 Pa Code 15.5(b); English Learner BEC at 7

<sup>xxi</sup> Dear Colleague Letter at 21; Hazleton Resolution Letter at 13-15

<sup>xxii</sup> 34 C.F.R. § 100.3(b)(1), (2); Dear Colleague Letter at 21

<sup>xxiii</sup> Executive Order 13166, *Improving Access for Persons with Limited-English Proficiency* (2000); English Learner BEC at 7; Dear Colleague Letter at 37-39; *Information for Limited English Proficient (LEP) Parents and Guardians and for Schools and School Districts that Communicate with Them*, U.S. Department of Justice & U.S. Department of Education, Office of Civil Rights, available at <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-lep-parents-201501.pdf>; OCR Resolution Agreement - Cleveland Metropolitan School District, OCR Docket #15-08-1276 (2011); Hazleton Resolution Letter at 18-21.

<sup>xxiv</sup> Hazleton Resolution Letter at 18; English Learner BEC at 7; Dear Colleague Letter at 38-40

<sup>xxv</sup> *Dear Colleague letter on Harassment and Bullying*, U.S. Department of Education, Civil Rights Division (2010) available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>; OCR Resolution Letter - St. Cloud Area School District #742, OCR Docket # 05-10-1146 (2011), available at <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/05101146-a.pdf>; OCR Resolution Letter - Independent School District #761, OCR Docket # 05-10-1148 (2011), available at <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/05101148-a.pdf>

<sup>xxvi</sup> *Id.*