



**PHILADELPHIA**  
1800 JFK Blvd., Suite 1900A  
Philadelphia, PA 19103  
T 215-238-6970  
F 215-772-3125

**PITTSBURGH**  
429 Fourth Ave., Suite 702  
Pittsburgh, PA 15219  
T 412-258-2120  
F 412-535-8225

July 30, 2020

Lynn Rauch, General Counsel  
Dr. Malika Savoy-Brooks, Chief Academic Supports Officer  
Allison Still, Deputy Chief, Office of Multilingual Curriculum & Programs  
The School District of Philadelphia  
440 North Broad St.  
Philadelphia, PA 19130

**Re: Ensuring the Rights of English Learners in the SY 2020-21 Re-Opening Plan**

Dear Ms. Rauch, Dr. Savoy-Brooks, and Ms. Still,

This is an unprecedented and challenging time for the School District of Philadelphia, and we appreciate all of the efforts of teachers, principals, BCAs, and administrators to support our families and schoolchildren. Thank you.

We are writing to raise critical concerns and propose specific recommendations to ensure that the School District of Philadelphia’s (“District”) Re-Opening Plan for the 2020-21 school year upholds the rights of English Learners (“ELs”) to overcome language barriers, supports ELs’ full participation in the curriculum, and ensures equal access to a quality public education. We raise these concerns and recommendations on behalf of the many students, parents and caregivers, and community advocates<sup>1</sup> who have contacted the Education Law Center (“ELC”) last school year and over the summer to voice their concerns regarding the inability of many English Learners to learn during this critical period of school closures and remote instruction.<sup>2</sup>

These challenges facing ELs and limited English proficient (“LEP”) families have been exacerbated by educational disruptions, trauma arising from the COVID-19 pandemic, and events exposing racism across all systems, including education, which has impacted

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<sup>1</sup> The concerns presented here were informed by many staff working with ELs and LEP families throughout the district including: Asian Americans United; Anna Perng, Co-Founder of Chinatown Disability Advocacy Project & Chair of the Mayor’s Commission on People with Disabilities Education Committee; HIAS PA; La Puerta Abierta; Nationalities Services Center; PEAL Center; Pennsylvania Immigration & Citizenship Coalition; Puentes de Salud; and Southeast by Southeast.

<sup>2</sup> As you know, concerns about EL instruction and access have been raised by ELC and others at multiple meetings and in correspondence since the March 2020 school closures, including March 2020 ELC email to General Counsel regarding language access in remote learning; April 2020 community questions shared with the District through City Council Education Committee; May 2020 meeting with M. Savoy-Brooks & A. Still, with follow-up email providing concerns and recommendations [See Appendix A]; July 2020 Town Hall questions to M. Savoy-Brooks; July 2020 partners call with P. Ryan, and various discussions with members of the Refugee Education Collaborative.

communities of color. We appreciate that the District has committed itself to fighting racism and dismantling systems of oppression that support white supremacy in our school system.<sup>3</sup>

Based on our review of the Re-Opening Plan and proposed changes, we urge the District to make important and necessary changes to its plan and instructional approach. We urge the District to make key modifications to its instructional approach, provide guidance to govern the implementation of English as a Second Language (“ESOL”), as well as provide additional supports to ELs across all learning environments. Otherwise, many of the 15,000 English Learners attending District schools will likely be denied adequate English language instruction.

### **English Learners Have Important Rights to Receive English Language Instruction**

The right of English Learners to access education has its roots in the struggles of anti-racism protests and legal challenges against racial discrimination in our courts. Title VI of the Civil Rights Act of 1964 forbids institutions and programs receiving federal funding, including public schools, from discriminating against individuals on the basis of race, color, or national origin.<sup>4</sup> Subsequent case law and the passage of the Equal Education Opportunities Act (“EEOA”) established that limited English proficient students experience discrimination when districts fail “to take appropriate action to overcome language barriers that impede equal participation in its instructional programs.”<sup>5</sup>

Federal regulations and state law further clarify that school districts should provide English Learners the same access to educational programming available to all students through the provision of English language instruction. Regulations pursuant to Title VI mandate that districts may not “[r]estrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others” or “[d]eny an individual an opportunity to participate in the program through the provision of services . . . which is different from that afforded others in the program . . . .”<sup>6</sup> In Pennsylvania, districts must implement English Language Development (“ELD”) instruction for students to overcome language barriers that prevent participation in educational programming. ELD is “a required component” of all language instruction educational programs (“LIEPs”) and must take place “daily throughout the day for ELs and is delivered by both ESL teachers and non-ESL teachers.”<sup>7</sup> Daily ELD “provides systematic, explicit, and sustained language instruction designed to prepare students for the general academic program.”<sup>8</sup> The Third Circuit has affirmed that schools cannot place ELs in an inappropriate program with insufficient language instruction without violating the EEOA.<sup>9</sup> The ELD program and instruction must be

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<sup>3</sup> See School District of Philadelphia, The School District of Philadelphia’s Anti-Racism Declaration, <https://www.philasd.org/antiracism/>.

<sup>4</sup> 42 U.S.C. § 2000d.

<sup>5</sup> See *Lau v. Nichols*, 414 U.S. 563 (1974); 20 U.S.C. § 1703(f).

<sup>6</sup> 34 C.F.R. § 100.3(b)(1)(i), (vi).

<sup>7</sup> Pennsylvania Department of Education, Basic Education Circular: Educating English Learners (ELs), <https://www.education.pa.gov/Policy-Funding/BECs/PACode/Pages/EducatingELs.aspx> (Jul. 1, 2017).

<sup>8</sup> *Id.*

<sup>9</sup> See *Issa, et al v. School District of Lancaster*, 2016 WL 4493202 (E.D.Pa. Aug. 26, 2016), *aff’d* 847 F.3d 121 (3d Cir. 2017).

informed by sound educational theory, reasonably calculated to implement that theory, and must be evaluated and shown to produce results indicating language barriers are being overcome.<sup>10</sup>

### **English Learners Experienced Significant Additional Instructional Challenges During School Closures Due to COVID-19**

Following statewide school closures in March 2020, the District established procedures to connect with students and families, including the distribution of critically-needed devices and student meals. With the transition to remote learning, English Learners and parents of English Learners encountered significant barriers to accessing their classes and completing assignments. Student and family experiences with ELD instruction during remote learning last school year varied based on the instructional model adopted at schools, as did the preparedness of school administrators and educators to teach ELs academic content virtually.<sup>11</sup> As the District prepares to deliver instruction and assessments this upcoming school year, educational programming must consider the instructional needs of ELs to ensure that they do not fall even further behind due to inadequate and inaccessible ELD instruction and the absence of necessary modifications and accommodations.

Students, community members, and advocates have continuing concerns about the lack of regular ELD instructional support and language modifications provided during remote instruction. These concerns include:

- Some parents reported that their children, who had received separate English as a Speaker of Other Languages (ESOL) instruction in regular school, were provided sessions with their ESOL teacher only once per week for one hour during remote learning in Spring 2020. These students need *more* targeted language instruction in the remote, virtual context than they do in the regular school environment as they have less exposure to peers speaking in English.
- Students who received push-in instruction in regular school did not consistently have ESOL teachers in their virtual classrooms at all, and when they did, students had very limited capacity to engage with their teachers for assistance in accessing academic content. Oftentimes, they could only receive help by using messaging and chat features in a Google Classroom, which was not feasible for EL students who cannot read and type in English or a language the ESOL teacher could understand.
- Parents of English Learners, and other limited English proficient parents, received instruction from teachers on assignments and coursework for their students in English only and could not assist their children, as they were expected to, in completing their work. During this period of remote learning, English Learners lacked opportunities to

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<sup>10</sup> *Castañeda v. Pickard*, 648 F.2d 989, 1009-10 (5th Cir. 1981).

<sup>11</sup> See Ensuring Educational Access for English Learners and Limited English Proficient Families in the School District of Philadelphia During School Closures, May 2020 (Appendix A).

learn instructional content or demonstrate their knowledge because of these language barriers.

With health and safety concerns related to COVID-19 continuing into the next school year, public education for all students will look different. These changes to education moving forward need to include practices and programming that protect the rights of English Learners, regardless of their language proficiency, to access and make progress in all academic programming and curricula available to English proficient peers.

### **District Plans For Re-opening In School Year 2020-21 Must Provide Adequate Support For English Learners**

The District's initial Re-Opening Plans included the expectation that students would meet state academic standards in core content areas and attend school across a variety of environments, none of which resemble the academic settings students previously experienced. Absent from this plan was the District's express commitment to ensure that schools provide ELD instruction that prepares English Learners to learn academic content and ensures equal participation in all educational programs, including extracurriculars. Unless the District supports schools to improve the provision of ELD instruction, many ELs will be denied the continuous high-quality instruction proposed in the District's Re-Opening Plan.<sup>12</sup>

The District has not yet provided a framework for upholding its obligation to reduce language barriers for English Learners and ensure equal participation in all available educational programming. The District clearly recognizes English Learners as a vulnerable student population and considered two instructional plans to provide four days of face-to-face instruction to English Learners<sup>13</sup> before settling on a hybrid plan for ELs to receive three days of virtual instruction. The plans require schools and the Digital Academy to provide curricula aligned with state standards in the content areas of English Language Arts (ELA), Mathematics, Science, Art/Music, and Physical Education but fail to address how educators will ensure that English Learners do not experience language barriers that prevent them from accessing these subjects.<sup>14</sup>

For the upcoming school year, the District must now prepare for instruction primarily delivered in a virtual environment that, as in the previous school year, prevented many ELs from learning because of the lack of ELD instruction and supports. Many English Learners shared their challenges with the District, such as the inability to participate in school when their only language support and modification consisted of an invitation to instant message with an ESOL

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<sup>12</sup> See School District of Philadelphia, Advancing Education Safely: SY 2020-2021, 4, [https://www.philasd.org/wp-content/uploads/2020/07/AES\\_SY20-21\\_English.pdf](https://www.philasd.org/wp-content/uploads/2020/07/AES_SY20-21_English.pdf) (stating that the District developed the plan with Guiding Principles including: continuous high-quality instruction delivered seamlessly to all students across environment; and educational equity for "all students with access to quality grade-level instruction . . . with a focus on removing and ending racist practices.)

<sup>13</sup> See *id* at 14. Instructional models including the provision of four days of face-to-face instruction for English Learners were ultimately rejected, with cost a critical barrier to adopting them.

<sup>14</sup> See *id* at 23; School District of Philadelphia, Digital Academy Program: What is the Digital Academy Program?, 2, [https://www.philasd.org/wp-content/uploads/2020/07/AES\\_SY20-21\\_DigAcademyPro-1.pdf](https://www.philasd.org/wp-content/uploads/2020/07/AES_SY20-21_DigAcademyPro-1.pdf).

teacher in some content classes or a single one-hour session every week with the ESOL teacher. English Learners are still required to access the majority of their instruction online, including engaging in full-time remote learning until at least November 17<sup>th</sup>.<sup>15</sup>

Though the District has removed the Digital Academy as an instructional model, information provided about the Digital Academy suggests that the District, in fact, recognizes the inadequacy of its virtual ELD instruction for ELs.<sup>16</sup> While the District has revised its approach to digital instruction to prioritize instruction for students from their enrolled schools, the District must develop clear policies, procedures, and guidance, and provide adequate supports to confer consistent and meaningful language instruction and reduce barriers that violate students' rights to ELD instruction and ensures access to core content instruction.

### **Recommendations To Protect The Civil Rights Of English Learners**

The District has recognized the importance of equitable access to fulfilling its mission to support all students and families as our communities move forward in this changed landscape. This commitment must include clear guidance and implementation of ELD instruction as required by law. ***The District must address and remedy the patchwork of inconsistent practices schools implemented in the Spring and must provide legally compliant language instruction, modifications to instruction and supports remotely on a consistent basis across all schools.*** ESOL and content teachers must have the knowledge, time, and resources to engage effectively with English Learners across digital instructional programs that uphold the students' rights to engage with the academic coursework and assignments that students will now be held accountable for completing. An education program in which English Learners languish in virtual classrooms with English-only instruction they cannot understand, insufficient direct ELD instruction, and no modifications to instruction is not supported by a sound educational theory nor reasonably calculated to implement that theory, or shown to produce results indicating language barriers are effectively eliminated. Rather, it is clear that this approach does not allow ELs to actually overcome language barriers.<sup>17</sup>

***To remedy these issues, we propose the following recommendations:***

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<sup>15</sup> See Advancing Education Safely at 15, 23 (describing the hybrid model as face-to-face learning two days per week on an alternating schedule with three days of virtual instruction. The plan also states that “[a]ll students are expected to attend school five days per week,” which means that most students will receive the majority for their instruction online.) See also The School District of Philadelphia, Letter from Dr. Hite, [https://www.philasd.org/wp-content/uploads/2020/07/7\\_28-Parent\\_Family-Message-Revised-Reopening-Plan-1.pdf](https://www.philasd.org/wp-content/uploads/2020/07/7_28-Parent_Family-Message-Revised-Reopening-Plan-1.pdf) (Jul. 28, 2020) (revising the District’s Re-Opening Plan to start the 2020-21 school year with full-time remote instruction for the first quarter and eliminating the Digital Academy option for students.)

<sup>16</sup> See Digital Academy Program: What is the Digital Academy Program? at 3 (stating that while the program is “open to students who receive services regarding English for speakers of other languages (ESOL) and students who receive special education supports and services, the Digital Academy may not be able to provide all of the benefits of in person instruction and services that the District is planning through the hybrid model.”)

<sup>17</sup> See e.g., *Issa, et al v. School District of Lancaster*, 2016 WL 4493202 (E.D.Pa. Aug. 26, 2016), *aff’d* 847 F.3d 121 (3d Cir. 2017) (rejecting education program with accelerated instruction for SLIFE students who could not understand the teachers who spoke only English).

- (1) Issue guidance to schools requiring the implementation of daily ELD instruction, which includes addressing the type and duration of ELD instruction to be provided to ELs based on their language proficiency levels. This guidance should also address the use of pull-out models of instruction for small groups. Last Spring, ineffective ‘push-in’ via virtual classrooms caused many students to languish in and disengage from virtual school altogether due to their inability to understand English-only instruction and lack of accessible support.
- (2) Provide training for subject matter teachers on how to modify instruction and ensure that ELD instruction is provided consistently across all learning environments.
- (3) Provide training for ESOL teachers on providing ELD instruction virtually and to co-teach with subject matter teachers to modify instruction and assignments for ELs.
- (4) Provide additional training to all teachers to assist them in better engaging with ELs and LEP parents, including training on the limitations of Google Translate on particular document types, and how to change the subtitle language in videos.
- (5) Provide additional support to LEP families to bridge the digital divide and ensure access to the necessary technology and knowledge to use devices to participate in virtual programming.
- (6) Provide communications regarding re-opening and changes in ELD instruction to LEP families in their native language as required by law.

We appreciate the District’s efforts to identify and address critical educational challenges facing ELs and their families and hope that these recommendations are used to inform further action. We believe that these recommendations are fully aligned with ongoing District priorities focused on supporting English Learners to ensure their right to equal participation in a quality education.

Thank you for your consideration. We look forward to working with the District on these important issues.

Regards,

Sophia Tan, Independence Foundation Public Interest Law Fellow  
Kristina Moon, Staff Attorney  
Maura McInerney, Legal Director

EDUCATION LAW CENTER PA

Cc: Patricia Ryan, Director, Office of Multilingual Curriculum & Programs  
Ludy Soderman, Director, Multilingual Family Support Unit, FACE

# Appendix A

## **Ensuring Educational Access for English Learners and Limited English Proficient Families in the School District of Philadelphia During School Closures**

We know that this is an unprecedented and challenging time for the School District of Philadelphia, and we appreciate all of the efforts of teachers, principals, BCAs, and administrators to support our families and schoolchildren. While the District has initiated a plan to provide education for all students, limited English proficient (LEP) communities are particularly vulnerable to falling behind. We provide this brief summarizing concerns from representatives of organizations serving LEP families to further inform and advance the discussion of supports needed for limited English proficient students and families in the School District of Philadelphia. In addition, community advocates have collaborated to propose the following recommendations with the hope that implementation of these suggestions can ensure the District's EL students and students with LEP caregivers are able to meaningfully access digital learning.

The following statement and recommendations were informed by staff working with ELs and LEP families through: Asian Americans United; Anna Perng, Co-Founder of Chinatown Disability Advocacy Project & Chair of the Mayor's Commission on People with Disabilities Education Committee; Education Law Center; Val Harteg, Education Program Manager at HIAS PA; La Puerta Abierta, Nationalities Services Center; PEAL Center; Pennsylvania Immigration & Citizenship Coalition; Puentes de Salud; and Southeast by Southeast.

### **Community Concerns**

#### **1. Timely and Accurate Information in Home Language**

Many families are not receiving access to critical District information due to inadequate translation and interpretation services. Families report issues with District communications across multiple media, including calls, letters, and online information. Though the District provides BCAs whom some students and families have connected with, many other families report not hearing from their BCAs at all. Access to information is particularly limited for LEP families that speak a language for which there is no assigned BCA. Even where BCAs are available, families raise a diverse range of questions for which answers are not easily accessible or available in their preferred language, including information on technical support, the grading policy, mental health and socio-emotional support, and support for students with disabilities.

#### **2. Internet Access**

Lack of internet access is a common barrier for LEP families preventing students from engagement with digital learning. The signal strength of the free hotspot locations, which many families need assistance with connecting devices to, is inconsistent for students using them for live instruction. Some families rely on cellular hotspots, which are similarly difficult to connect to, inconsistent, and costly for sustained online learning. Enrollment into low-cost internet options have improved, but often requires knowledgeable advocacy of an English-speaking advocate to help families navigate. Families lack information on the terms of their low-cost services, including when the free trial periods end and



consequences for nonpayment. For families that enrolled when schools closed, the free trial periods will end before classes end, and the financial cost of paying even for low-cost options may cause students and families to disconnect before the end of this school year.

### **3. Digital Literacy and Technical Assistance for Remote Learning**

LEP parents have also expressed concerns that they lack the familiarity and knowledge to use devices and programs to ensure that their children are able to complete schoolwork and assignments. Central among their concerns is that all of the devices and programs are in English. The District has helpfully provided language hotlines and online resources in 10 languages, but many families lack the technology or digital literacy to access resources and information provided in an online or otherwise inaccessible format. For example, families that are not proficient at reading or communicating in English may have difficulty understanding the updates the District shares on its website, and Google Translate does not work well on all document or program types.

### **4. English Language Development: ESL instruction and modification in content courses**

Particularly for the many ELs who do not communicate in English at home, ESL instruction and modifications in their content classes are more important than ever. Unfortunately, the initial materials for Phase IV Planned Instruction do not appear to address the critical ESL instruction upon which so many ELs depend. These students need *more* targeted language instruction in this context than they do in the regular school environment as they are less exposed to peers speaking in English. Additionally, many families report that there is no ESL instructor available in the content classes and content teachers appear to need more training about how to modify instruction and provide accommodations for ELs within the context of digital learning. Students and parents are reporting that schoolwork or assignments are posted in varied formats including pdf, Google Slides, PowerPoint, and Word that do not allow for translation through Chromebooks and Google applications. As a result, despite the hard work of teachers to provide instructional materials during school closures, many ELs remain unable to complete assignments because of a lack of modifications to their instructional materials.

### **Recommendations:**

The recommendations suggested below were developed after discussions among LEP advocates and providers on the experiences of their communities during this disruptive period of school closures. They reflect concerns that LEP students and families, as well as others across Philadelphia need information and support in multiple forms to ensure accessibility. We hope to be able to collaborate with the District during the implementation of these recommendations.

- Work with BCAs, the City, and community partners to develop a variety of digital and instructional resources that can be shared with students and families in their home languages. This could include easy-to-follow instructional resources about how to log into Planned Instruction and translate digital information using different platforms. It could also include short updates in multiple languages that can be shared on social media or messaging platforms for

students and families to receive timely and updated information on familiar social media and messaging applications. An example of simple and effective oral translation videos is provided by Southeast by Southeast Mural Arts program at this YouTube playlist of Coronavirus health information:

<https://www.youtube.com/watch?v=HtytvfdpdiY&list=PLeYZXO2Vtyu04wPa6z74chQeefYrvimwU>.

- Ensure that every EL and LEP family is contacted regularly to assess any barriers and support needed. Given disparities in EL support across district schools, additional guidance and resources, including collaboration with community partners, may need to be provided to particular schools with less robust BCA and ESL supports.
- Contact LEP parents to identify digital barriers and provide support as needed. School staff should engage in proactive outreach to LEP parents, which may require training staff on how to request BCAs and use telephonic interpretation.
- Provide BCAs with the necessary information to effectively engage with and connect students and families requesting technical or instructional assistance with other District staff that can provide support. BCAs should also receive support from and coordinate with ESL and content teachers, and District and school staff providing technological, mental health, special education, and other supports, to ensure students can access and engage with their learning during this critical period.
- Continue to work with the City and other partners to advocate for more hotspots, lower barriers to registration for low-cost internet, and extension of free trial periods.
- Work with the City and other partners to develop accessible information for students and families on how to seek support when enrolling for internet access, meaningful notice that free trials are temporary, and how families can terminate or move their services if necessary.
- Collaborate with community partners who are already assisting families to connect with students and families to provide technical assistance for digital learning.
- Provide guidelines and training for content teachers to work with ELs in their virtual classrooms. The Office of Multilingual Curriculum and Programs (OMCP) is well positioned to develop such guidance.
- Increase opportunities for ELs to engage directly with ESL teachers in ELD instruction and oral participation activities, particularly those with lower proficiency levels.
- Provide additional training to teachers to assist them in better engaging with ELs, including training on the limitations of Google Translate on particular document types, and how to change the subtitle language in videos.

May 2020