

## RIGHTS OF MULTILINGUAL LEARNERS AND LINGUISTICALLY AND CULTURALLY DIVERSE FAMILIES

August 2021

Linguistically and culturally diverse students and families have the same rights as other students and caregivers as well as *additional* rights and protections. These language access rights support individuals who do not primarily read, speak, write, or understand English. Below is an overview of the rights of students receiving English language instruction (identified in laws as English learners or ELs) and parents or guardians whose first language is not English (identified in laws as limited English proficient or LEP).

### Special Considerations

**Virtual Learning:** If a school is offering a virtual learning option during any part of the school year, families can ask for help with internet access or how to borrow and use a computer from the school. Schools should share instructions about how to do online learning, including how to use translation and interpretation services. While accessing school virtually, students learning English continue to have the right to receive English language instruction and support from ESL teachers and subject teachers to understand and participate in their virtual classes.

If a school is unable to conduct an in-person identification and screening of a child’s English language skills, the school should use other methods of evaluation.<sup>1</sup> For example, a school can speak with the child’s family with an interpreter, conduct a phone or online meeting with the student, and conduct a review of the student’s academic records to determine their best placement for English language instruction. A school must provide the family with a description of the academic placement and supports that will be available, and this information should be shared in the family’s preferred language. A formal in-person screening of the student should still be done as soon as it is possible to do so.

Families have the right to receive interpretation and translation services provided by the school. These translation and interpretation services should be provided for in-person, virtual, and telephonic meetings (“language line”), and the school should provide translated documents and information on changes in instruction, health-related policies and procedures, and other important issues.

If a child has a disability, the school must talk with parents about their child’s special education services in the parents’ preferred language. This includes information about supports a child will receive and changes to services due to pandemic-related limitations. Forms requiring the consent of a parent (like the “NOREP”) must be fully translated. If a school cannot provide certain services during virtual learning, then a child may be eligible to receive make-up services called “COVID Compensatory Services.”<sup>2</sup>

### THE RIGHT TO ATTEND SCHOOL

- All students have the right to attend public school – including charter and magnet schools – regardless of their immigration status or preferred language(s).<sup>3</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>4</sup>
- Families enrolling children in a new school district may opt out of the school sharing “directory information,” including students’ names, addresses, telephone numbers, date and place of birth, with local, state, or federal agencies unless the parent or caregiver consents. Families must be offered this option and should opt out as soon as possible after enrolling students in school.<sup>5</sup>
- Families need four 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 five business days.<sup>6</sup> If you are having trouble enrolling your child, see ELC’s fact sheet on the [Enrollment Complaint Process](#).
- If a child is experiencing homelessness or in foster care, the school must enroll the child *immediately*, even if they do not have the four documents described above.<sup>7</sup>
- Caregivers or students should complete a Home Language Survey to identify their language needs.<sup>8</sup> The survey will ask about the language(s) spoken in a student’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>9</sup>
- Schools must use objective tests to determine if a student benefits from English language instruction.<sup>10</sup> These programs are commonly known as English as a Second Language (ESL) classes.
- 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>11</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>12</sup> Parents should ask about the availability of programs for newly arrived immigrants, often called “newcomer programs,” which offer special programming.
- An EL who has been placed into Alternate Education for Disruptive Youth (AEDY) programs also has the right to an English language instruction program that is appropriate to the student’s age and level of English proficiency. An EL cannot be placed in an AEDY program that does not meet their language needs.
- English language instruction is optional, and parents or caregivers have the right to refuse enrollment into an English language program. Parents of ELs also 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.

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- English language instruction must be delivered by a licensed ESL teacher. This program must be adequately resourced and designed to help students learn English quickly.<sup>13</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>14</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 ENGLISH LANGUAGE INSTRUCTION

- Once a student is deemed proficient in English, they 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>15</sup>
- After a student is exited from ESL, the school must monitor their progress for two years. If the student continues to struggle due to a language barrier, the school will re-designate them as an EL and provide them with supports and services to learn English.<sup>16</sup>

### THE RIGHT TO SPECIAL EDUCATION SERVICES

- ELs with disabilities have the right to receive *both* special education and ESL services.<sup>17</sup>
- Caregivers should request an evaluation in writing. Written requests can be texts, emails, or a letter given to a teacher, secretary, or school administrator. See our form for requesting an evaluation.
- There is no waiting period for evaluating an EL for special education.<sup>18</sup> After the parent signs a consent form for evaluation, which should be provided in the caregiver's preferred language, the school must complete the evaluation in 60 days.<sup>19</sup>
- Schools must make every effort to evaluate ELs in their preferred language.<sup>20</sup>
- An EL's special education plan must consider their language needs.<sup>21</sup> The team that creates this plan must include an ESL teacher.<sup>22</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>23</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>24</sup>
- Schools must ensure that testing procedures for specialized programs do not screen out ELs solely because they are not fluent in English.<sup>25</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>26</sup>

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- 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>27</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, gender identity, ethnicity, national origin, immigration status, or language.<sup>28</sup>
- Schools must take steps to protect students who are being bullied and to stop known bullies from engaging in negative behavior.<sup>29</sup> For more information see ELC’s guide – [“What to Do When Your Child Is Bullied or Harassed?”](#)

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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, community engagement, 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 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

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<sup>1</sup> See, e.g., *Provisional K-12 English Learner Identification Procedure During Periods of Extended School Closure*, Pennsylvania Dept. of Education (May 4, 2020) available at <https://www.education.pa.gov/Documents/Teachers-Administrators/Curriculum/ESL/Provisional%20ELL-Identification-Procedure%20K-12.pdf>.

<sup>2</sup> *Guidance and Answers to FAQs on COVID-19 Compensatory Services*, Pennsylvania Dept. of Education (June 30, 2020) available at <https://www.education.pa.gov/K-12/Special%20Education/FAQContact/Pages/COVID-19-Compensatory-Services.aspx>.

<sup>3</sup> 24 P.S. §§ 1301, 1302; 22 Pa. Code § 11.11(a)(1).

<sup>4</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>5</sup> 20 U.S.C. § 1232g(5)(A), (B).

<sup>6</sup> 22 Pa. Code § 11.11(b)-(c).

<sup>7</sup> 42 U.S.C. § 11432(g)(3)(C)(1)); ESEA § 1111(g)(1)(E)(ii).

<sup>8</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>9</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>10</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>11</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>12</sup> 20 U.S.C. § 6312(e)(3)(A).

<sup>13</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>14</sup> English Learner BEC at 2.

- <sup>15</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>16</sup> English Learner BEC at 6; Dear Colleague Letter at 34.
- <sup>17</sup> Dear Colleague Letter at 25; English Learner BEC at 8.
- <sup>18</sup> Dear Colleague Letter at 25; English Learner BEC at 8.
- <sup>19</sup> 34 CFR § 300.301(c)(1).
- <sup>20</sup> 20 U.S.C. § 1412(6)(B); 20 U.S.C. § 1414(b)(3)(A); 34 C.F.R. § 300.304(c)(1)(ii).
- <sup>21</sup> 20 U.S.C. § 1414(d)(3)(B)(ii); 34 C.F.R. § 300.324(a)(2)(ii).
- <sup>22</sup> Dear Colleague Letter at 27; English Learner BEC at 8.
- <sup>23</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>24</sup> Dear Colleague Letter at 21; Hazleton Resolution Letter at 13-15.
- <sup>25</sup> 34 C.F.R. § 100.3(b)(1), (2); Dear Colleague Letter at 21.
- <sup>26</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>27</sup> Hazleton Resolution Letter at 18; English Learner BEC at 7; Dear Colleague Letter at 38-40.
- <sup>28</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>29</sup> *Id.*