

RIGHTS OF MULTILINGUAL AND CULTURALLY DIVERSE STUDENTS AND FAMILIES

August 2024

Multilingual and culturally diverse students and families have the same rights as other students and caregivers as well as important **additional** rights and protections. Language access rights support individuals who are learning to read, speak, write, or understand English and primarily speak a language other than English. In addition, important laws protect students from discrimination based on race, ethnicity, national origin, and immigration status.¹ These are important tools to combat the everyday racism that continues to pervade our schools, negatively affecting a child’s mental and physical health and development.²

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 preferred language is not English (identified in laws as “limited English proficient” or “LEP”). This fact sheet is also available in [Spanish](#) and [Chinese](#).

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).³ See ELC’s fact sheet on the [Rights of Multilingual Caregivers to Enroll Children in School](#) for additional information.

Special Considerations

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, virtually, and in telephonic meetings (“language line”). The school should provide translated documents and important information on changes in instruction, health-related policies and procedures, discipline, special education, and other important issues. ELC’s [forms to request interpretation and translation](#) from the school for general education or special education are available in English, Spanish, Arabic, Chinese, and Nepali.

Virtual Learning: Your child has a right to in-person instruction, with limited exceptions, such as occurred during COVID-19. If you choose to have your child participate in virtual learning, your child still has a right to **effective** English language instruction and support from ESL teachers and subject teachers to understand and participate in virtual classes. Families can ask for help with internet access or how to use a computer from the school. Schools must share instructions about how to do online learning, including how to use translation and interpretation services.

- All children have the right to go to school in Pennsylvania until the end of the school term when they turn 21 or until they graduate with a regular high school diploma (whichever comes first), even if they already have a GED.⁴
- **Schools cannot ask families or students about their immigration status.** Families do not have to provide immigration documents or a Social Security number.⁵
- Families enrolling children in a new school district may opt out of the school sharing “directory information,” including students’ names, addresses, telephone numbers, and 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.⁶
- Families need four documents to enroll in school – proof of age, residency, immunizations, and an “Act 26 affidavit,” which is a signed statement about the student’s disciplinary record. After receiving these documents, the school must enroll the child within five business days.⁷ 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.⁸
- Caregivers or students should complete a home language survey to identify their language needs.⁹ The survey will ask about the language(s) spoken in a student’s home.

THE RIGHTS OF ELS WITH FOREIGN TRANSCRIPTS

- A school-age student residing in the United States is entitled to attend school unless they have already graduated and earned what is equivalent to a U.S. diploma (*i.e.*, 12th grade education).
- Schools must evaluate a student’s foreign transcripts to determine whether prior credits should transfer to the U.S. school.¹⁰ The student and parents/guardian can provide information about the prior school’s curriculum, time spent in class, grading policies, etc.
- Credit should be transferred if the work is consistent with district and state standards and of “comparable scope and quality” as work in the U.S. school.¹¹
- Schools should notify the student and parents of the outcome of the credit transfer evaluation.¹²
- ELS must have access to grade-level courses so that they can meet promotion and graduation requirements.¹³

THE RIGHT TO LEARN ENGLISH

- Schools are required to teach students who are learning 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.¹⁴ These instructional programs are commonly known as English as a Second Language (ESL) classes.
- Schools must use objective tests to determine if a student would benefit from English language instruction.¹⁵
- Schools must provide multilingual learners with a high-quality curriculum that is grade-level appropriate.¹⁶

- 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.¹⁷
- Schools must tell parents if their child needs language instruction, and what program the school will use to help the child learn English.¹⁸ 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 an Alternate Education for Disruptive Youth (AEDY) program 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.¹⁹ Parents of ELs also have the right to refuse separate, specialized programs and services that may be part of language instruction programs. A parent’s decision must be informed and voluntary. School staff may not influence these decisions in any way.
- 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.²⁰
- 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.²¹
- An EL cannot be retained in a grade based solely on the student’s lack of English proficiency.
- Multilingual learners who are taking classes online 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.
- EL students are entitled to testing accommodations on state assessments.

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.²²
- After a student is exited from ESL, the school must monitor their progress for two years. If the student continues to need language assistance, the school will redesignate them as an EL and provide them with supports and services to learn English.²³

THE RIGHT TO SPECIAL EDUCATION SERVICES

- ELs with disabilities have the right to receive **both** special education and ESL services.²⁴
- 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 [fact sheet on special education evaluations](#), which is also available in [Spanish](#), [Chinese](#), [Arabic](#), and [Nepali](#), and [our form](#) for requesting an evaluation.

- There is no waiting period for evaluating an EL for special education.²⁵ 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.²⁶
- Schools must make every effort to evaluate ELs in their preferred language.²⁷
- An EL's special education plan must consider their language needs.²⁸ The team that creates this plan must include an ESL teacher.²⁹
- Interpreters must be provided by the school for IEP meetings, and special education documents must be provided in a language the parent can understand.³⁰

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, Advanced Placement (AP) classes, gifted classes, sports, and extracurricular activities.³¹
- Schools must ensure that testing procedures for specialized programs do not screen out ELs solely because they are not fluent in English.³²

THE RIGHT TO TRANSLATION AND INTERPRETATION

- Districts must reach out to LEP parents to inform them of how they can be involved in their child's education, and schools must share information with 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.³³
- 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.³⁴

THE RIGHT TO BE FREE FROM DISCRIMINATION, BULLYING, AND HARASSMENT

- All children have the right to attend public school, regardless of immigration status or language preference, and schools must provide language assistance as needed so that all students can meaningfully participate in school.³⁵
- 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.³⁶
- Anti-immigrant prejudice and racism can lead to bullying of ELs by other students and school staff, which can cause negative physical, mental health, and academic outcomes for students who are being bullied.³⁷
- Schools must take steps to protect students who are being bullied and to stop known bullies from engaging in negative behavior.³⁸ For more information on how to tell the school about bullying and the steps the school must take to stop the bullying, see our quick reference [fact sheet](#), which is also available in [Spanish](#) and [Chinese](#). You can also review ELC's comprehensive parent guide and toolkit – [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, 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, multilingual 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 or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

¹ C.R. Div., U.S. Dep't of Just. & Off. for C.R., U.S. Dep't of Educ.. *Confronting Discrimination Based on Nat'l and Immigr. Status, A Res. for Families and Educators* (June 2023),

<https://www2.ed.gov/about/offices/list/ocr/docs/confronting-discrimination-national-origin-immigration-status>.

² See, e.g., Christia Spears Brown, Migration Pol'y Instit. *The Educ., Psych., and Soc. Impact of Discrimination on the Immigrant Child* (Sept. 2015), <https://www.migrationpolicy.org/sites/default/files/publications/FCD-Brown-FINALWEB.pdf>; Franka Metzner, et al., *Experiences of Discrimination and Everyday Racism Among Child. and Adolescents with an Immigrant Background - Results of a Systematic Literature Rev. on the Impact of Discrimination on the Dev. Outcomes of Minors Worldwide*, 13 FRONT PSYCHOL. 805941 (May 9, 2022),

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9126147/>.

³ 24 P.S. §§ 13-1301-02; 22 PA. CODE § 11.11(a)(1); C.R. Div., U.S. Dep't of Just. & Off. for C.R. U.S. Dep't of Educ., *Protecting Access to Educ. for Migratory Child.* (June 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-migratory-children-202306.pdf>; C.R. Div., U.S. Dep't of Just. & Off. for C.R. U.S. Dep't of Educ. *Protecting Access to Educ. for Unaccompanied Child.* (June 2023), <https://www.justice.gov/crt/page/file/1587106/download>.

⁴ 22 PA. CODE § 11.12.

⁵ *Plyler v. Doe*, 457 U.S. 202 (1982) (holding that public schools may not prohibit migrant children from attending school); 22 PA. CODE § 11.11(d); *Basic Educ. Circular, Enrollment of Students*, PA. DEP'T OF EDUC., 3 (2009) [Hereinafter "Enrollment BEC"], <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/EnrollmentStudents.aspx>; *Confronting Discrimination Based on Nat'l Origin and Immigr. Status*, C.R. Div., U.S. Dep't of Just. & Off. for C.R. U.S. Dep't of Educ. (Aug. 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/confronting-discrimination-national-origin-immigration-status>.

⁶ 20 U.S.C. § 1232g(5)(A)-(B).

⁷ 22 PA. CODE § 11.11(b)-(c).

⁸ 42 U.S.C. § 11432(g)(3)(C)(i)); ESEA § 1111(g)(1)(E)(ii).

⁹ Enrollment BEC at 3; U.S. Dep't of Just. & U.S. Dep't of Educ., Off. for C.R., *Ensuring Eng. Learner Students Can Participate Meaningfully and Equally in Educ. Programs 1*, <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-el-students-201501.pdf>.

¹⁰ *Evaluating Foreign Transcripts*, PA. DEP'T OF EDUC. (Apr. 2017), <https://www.education.pa.gov/Documents/Teachers-Administrators/Curriculum/ESL/Evaluating%20Foreign%20Transcripts.pdf>

¹¹ *Id.*

¹² *Id.*

¹³ *Ensuring Eng. Learner Students Can Participate Meaningfully and Equally in Educ. Programs*, *supra* note 9, at 2.

¹⁴ 22 PA. CODE § 4.26; *Castaneda v. Pickard*, 648 F.2d 989, 1011-14 (5th Cir. 1981) (holding schools must provide multilingual learners English language instruction that is sound in theory and programs must be evaluated for effectiveness); *Lau v. Nichols*, 414 U.S. 563 (1974) (holding the school district's failure to provide English language instruction to Chinese speaking students was a violation of 42 U.S.C. § 2000d); Catherine E. Lhamon & Vanita Gupta, C.R. Div., U.S. Dep't of Just. & Off. for C.R., U.S. Dep't of Educ., *Dear Colleague Letter: Eng. Learner Students and Limited Eng. Proficient Parents*, 10, 17 (Jan. 7, 2015), [Hereinafter "Dear Colleague Letter"], <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

¹⁵ Dear Colleague Letter at 10-11; *OCR Compliance Rev. Letter to Hazleton Area SD - 03-10-5002*, U.S. Dep't of Educ., Off. for C.R., 6 (2014) [Hereinafter "Hazleton Resolution letter"], <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/03105002-a.pdf>; *Basic Educ. Circular: Educating Eng. Learners (ELs)*, Pa. Dep't of Educ., 2 (2017) [Hereinafter "English Learner BEC"]; *English As A Second*

Language, PA. DEP'T OF EDUC., <https://www.education.pa.gov/Teachers%20-%20Administrators/Curriculum/English%20As%20A%20Second%20Language/Pages/default.aspx>; Eng. Learner Identification Procedure - Grades K-12, PA. DEP'T OF EDUC., <https://www.education.pa.gov/Teachers%20-%20Administrators/Curriculum/English%20As%20A%20Second%20Language/Pages/Identification-Placement-Exit.aspx#.Vbt7YmXD-Uk>.

¹⁶ *Newcomer Toolkit*, U.S. DEP'T OF EDUC. (Sept. 2017), <https://www2.ed.gov/about/offices/list/oela/newcomers-toolkit/ncomertoolkit.pdf>.

¹⁷ *Castaneda v. Pickard*, 648 F.2d at 1009; *Issa v. Sch. Dist. of Lancaster*, No. CV 16-3881, 2016 WL 4493202, at *3, 6 (E.D. Pa. Aug. 26, 2016), *aff'd and remanded*, 847 F.3d 121 (3d Cir. 2017) (holding that a school's practice of integrating of beginner multilingual learners with advanced multilingual learners and native English speakers was not a sound educational practice).

¹⁸ 20 U.S.C. § 6312(e)(3)(A).

¹⁹ Dear Colleague Letter, *supra* note 14, at 29-32.

²⁰ *Castaneda*, 648 F.2d at 1013; Dear Colleague Letter, *supra* note 14, at 14-15; English Learner BEC, *supra* note 15, at 3, 6; Hazleton Resolution Letter, *supra* note 15, at 7-8, 11.

²¹ English Learner BEC at 2.

²² Dear Colleague Letter, *supra* note 14, at 32-34; Hazleton Resolution letter, *supra* note 15, at 16; Eng. Learner BEC, *supra* note 15, at 6; *State Required Reclassification, Monitoring, and Re-designation of Eng. Learners (ELs)*, Pa. Dep't of Educ., <https://www.education.pa.gov/Documents/Teachers-Administrators/Curriculum/ESL/Reclassification%20Monitoring%20and%20Redesignation%20of%20ELs.pdf>.

²³ English Learner BEC, *supra* note 15, at 6; Dear Colleague Letter, *supra* note 14, at 34.

²⁴ Dear Colleague Letter, *supra* note 14, at 25; English Learner BEC, *supra* note 15, at 8.

²⁵ Dear Colleague Letter, *supra* note 14, at 25; English Learner BEC, *supra* note 15, at 8.

²⁶ 34 CFR § 300.301(c)(1).

²⁷ 20 U.S.C. § 1412(a)(6)(B); 20 U.S.C. § 1414(b)(3)(A); 34 C.F.R. § 300.304(c)(1)(ii).

²⁸ 20 U.S.C. § 1414(d)(3)(B)(ii); 34 C.F.R. § 300.324(a)(2)(ii).

²⁹ Dear Colleague Letter, *supra* note 14, at 27; English Learner BEC, *supra* note 15, at 8.

³⁰ 20 U.S.C §§ 1415(b)(4), 1415(d)(2); 34 C.F.R. §§ 300.503(c)(1)-(2); 22 Pa. Code § 15.5(b); English Learner BEC, *supra* note 15, at 7.

³¹ *Ensuring Meaningful Participation in Advanced Coursework and Specialized Programs for Students Who Are Eng. Learners*, U.S. Dep't of Educ., Off. for C.R. (June 2023), *Ensuring Meaningful Participation in Advanced Coursework and Special Programs*, <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-ap-participation-el.pdf>; Dear Colleague Letter, *supra* note 14, at 21; Hazleton Resolution letter, *supra* note 15, at 13-15.

³² 34 C.F.R. § 100.3(b)(1)-(2); Dear Colleague Letter, *supra* note 14, at 21.

³³ *Protecting Access to Educ. for Migratory Child.*, *supra* note 3; *Protecting Access to Educ. for Unaccompanied Child.*, *supra* note 3; Executive Order 13166, *Improving Access for Persons with Ltd.-Eng. Proficiency* (2000); English Learner BEC at 7; Dear Colleague Letter at 37-39; *Info. for Ltd. Eng. Proficient (LEP) Parents and Guardians and for Schools and Sch. Districts that Communicate with Them*, U.S. Dep't of Just. & U.S. Dep't of Educ., Off. for C.R., <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-lep-parents-201501.pdf>; OCR Resolution Agreement - Cleveland Metro. Sch. Dist., OCR Docket #15-08-1276 (2011)

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/15081276-b.pdf>"<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/15081276-b.pdf> (outlining action steps for the school district to take after finding it failed to provide meaningful access to programs and activities to LEP parents because translation and interpretation was not provided to LEP families, including translation for disciplinary matters); Hazleton Resolution letter, *supra* note 15, at 18-21.

³⁴ Hazleton Resolution letter, *supra* note 15, at 18; English Learner BEC, *supra* note 15, at 7; Dear Colleague Letter, *supra* note 14, at 38-40.

³⁵ *Plyler v. Doe*, 457 U.S. 202 (1982) (holding that public schools may not prohibit migrant children from attending school); 22 PA. CODE § 11.11(d); Enrollment BEC; *Confronting Discrimination Based on Nat'l Origin and Immigr. Status*, C.R. Div., U.S. Dep't of Just. & Off. for C.R., U.S. Dep't of Educ. (Aug. 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/confronting-discrimination-national-origin-immigration-status>.

³⁶ Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-6(a) (prohibits discrimination in schools on the basis of race, color, religion, sex, or national origin); Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (forbids schools that receive federal financial assistance from discriminating against students based on race, color, or national origin); Pa. Human Relations Act (PHRA), 43 P.S. §§ 951–963 (prohibits discrimination because of a current student's race, color, sex, religion, ancestry, national origin); Pa. Fair Educ. Opportunities Act, 24 P.S. §§ 5001–5010; Off. for C.R., U.S.

Dep't of Educ., *Factsheet: Harassment Based on Race, Color, or National Origin on Sch. Campuses* (July 2, 2024), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-race-color-national-origin-202407.pdf>; Off. for C.R., U.S. Dep't of Educ., *Dear Colleague Letter on Harassment and Bullying* (Oct. 26, 2010), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>; OCR Resolution letter - Indep. Sch. Dist. #761, OCR Docket # 05-10-1148 (2011) <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/05101148-a.pdf>, (school district was required to develop strategies to avoid, address, and remedy harassment of Somali students based on national origin, and provide equal access to honors and Advanced Placement courses) ; OCR Resolution letter - St. Cloud Area Sch. Dist. #742, OCR Docket # 05-10-1146 (2011), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/05101146-a.pdf> (school district was required to develop strategies to avoid, address, and remedy harassment of Somali students based on their national origin)

³⁷ *Int'l Day Against Violence and Bullying at Sch., including Cyberbullying*, U.S. Comm. for Refugees and Immigrants (Oct. 2023), <https://refugees.org/international-day-against-violence-and-bullying-at-school-including-cyberbullying/#:~:text=Refugee%20students%20and%20those%20who,cited%20in%20Lloyd%2C%202019>; Christia Spears Brown, Migration Pol'y Inst., *The Educ., Psych. and Soc. Impacts of Discrimination on the Immigrant Child* (Sept. 2015), <https://www.migrationpolicy.org/research/educational-psychological-and-social-impact-discrimination-immigrant-child>.

³⁸ *Id.* (“School systems and educators are in a key position to provide inclusive and culturally safe school environments by implementing strategies that proactively address and reduce bullying and discrimination, dispel negative preconceptions, and provide opportunities for positive interactions across different groups and cultures. When bullying does occur, it is critical that school personnel act swiftly using a restorative justice model that emphasizes communication, empathy, reconciliation, and support to those who are harmed.”) (internal citations omitted).