

Know Your Rights: English Language Learner Resource Requirements

The Campaign for Educational Equity undertook an extensive research project on educational inadequacies in high-need schools around the state and published findings about widespread violations of students' educational rights. This brief, part of a series, explains the rights of English language learners in New York schools and summarizes our key findings in this area.

New York Requirements for Resources for English Language Learners

The New York State constitution entitles all students to the “opportunity for a sound basic education.” This means, among other things, that all schools must have adequate resources to meet the needs of students who are not yet proficient in English. *English language learners (ELLs), also sometimes known as “limited English proficient” (LEP) students, must receive equal access to all school programs, including extracurricular activities, and services offered by the school district and be given the opportunity to achieve the same educational goals and meet the same standards as the general student population (Commissioner’s Regulations Part 154).*



Choice of Language Programs

ELL students have a right to be served in English-as-a-Second-Language (ESL) or bilingual education/dual-language programs for up to three years from the date of enrollment in a school, unless the New York State Education Commissioner grants an extension.

- Schools *must* provide a bilingual program where 20 or more ELLs attend school in the same building, at the same grade level, and have the same native language (except in NYC, where, in schools serving grades K-8, ELLs are entitled to bilingual education programs when at least 15 ELLs of the same native language are in two contiguous grades—for example, across the 7th and 8th grades).
 - State regulations require that these calculations be made at the school-building level; it is unclear how this requirement applies to multiple small schools housed in one building, that together have enough ELL students to trigger the creation of a bilingual-education program but individually fall below the minimum enrollment.
- Schools or districts without enough ELLs to mandate a bilingual/dual-language program may still choose to offer one.
- Parents of students in schools that lack enough ELLs to mandate bilingual/dual-language education must be given the opportunity to transfer their children to schools, within their respective school district, that offer those programs.

Requirements for “Free-Standing” ESL Programs

In ESL programs, ELL students have a right to two types of instructional support, a “language-arts instructional component” and a “content-area instructional component.” Both must take into account the first language and culture of ESL students.

What Is the Constitutional Right to a Sound Basic Education?

For all the details, see
www.equitycampaign.org

Language Arts Component

- In grades K-8, at beginning and intermediate levels of English language proficiency, ELLs must receive at least two units of study of ESL instruction (roughly 1 hour and 12 minutes a day), or its equivalent; at the advanced level, at least one unit of study of ESL instruction (roughly 36 minutes a day) *and* at least one unit of study of English language arts (ELA) instruction.
- In grades 9-12, at a beginning level of English language proficiency, ELLs must receive at least three units of study of ESL instruction (roughly 1 hour and 48 minutes a day) and, at an intermediate level, at least two units of ELL study (roughly 1 hour and 12 minutes a day). At an advanced level, at least one unit of study (roughly 36 minutes a day) and at least one unit of study of ELA instruction.

Content Area Component

- In all grades, ELL students must receive grade- and age-level appropriate instruction in required content-area subjects in English supported by English as a second language methodologies, “employed in a systematic and structured way.”

Requirements for Bilingual or Dual-Language Programs

As in ESL programs, bilingual/dual-language education programs must take into account the first language and culture of the students. ELL students have a right to English, ESL, and native language-arts instruction as well as content-area instruction:

- ESL instruction with the same time requirements as those for free-standing ESL programs;
- For students at an advanced level of English proficiency, at least one unit (roughly 36 minutes a day) of ELA instruction;
- At least one unit (roughly 36 minutes a day) of native language-arts instruction (e.g., language-arts instruction provided in Spanish), or its equivalent; and
- Content-area component: in all grades, grade- and age-level appropriate instruction in required content-area subjects, delivered in English and in a student’s native language and supported by ESL methodologies “employed in a systematic and structured way.”

Support Services Requirements

ELL students have a right to a range of support services, including

- Individual or group counseling, home visits, and parental counseling, in students’ first language (where appropriate), to help them reach and sustain an adequate level of academic achievement.
- Academic intervention services (AIS), including extra academic support, for any students not at grade level in ELA, math, science, or social studies.
- For ELL students suspected of having a disability, a bilingual, multidisciplinary assessment before they are identified as having a disability and referred for special education services.
- Opportunities to participate in magnet schools, gifted and talented, and other special programs as well as after-school programs for language enrichment.

In addition, students who have transitioned out of a free-standing ESL program or bilingual/dual-language program and into a mainstream English program must receive, for at least one year, support services to help ensure a smooth transition.

Professional Development Requirement

All personnel who teach or provide other services to ELLs must receive in-service training “to enhance their appreciation for the pupils’ native languages and cultures and their ability to provide appropriate instructional and support services.”

Rights of ELL Students' Families

New York State law also guarantees ELL students' families important rights, including:

- Sufficient translation services to ensure that parents play an integral role in assisting their children's learning and can be actively involved in their children's school.
- Parents of ELLs must be notified, in English and in a language they understand, of their options whenever their children are placed in a bilingual/dual-language or ESL program.
- Parents have the right to an orientation session, in their first language, within the first semester of their child's enrollment in a school, on state standards, assessments, school expectations, and general program requirements for the bilingual/dual-language education program and the ESL program.
- School districts must make an effort to meet with the parents of ELLs at least twice a year to help parents understand the educational program and supports available to their children.
- Parents have the right to withdraw their children from bilingual/dual-language education programs if the parents meet with both the principal and the school/district supervisor of bilingual education *and* students classified as ELLs at least participate in an ESL program.

How Schools Measured Up

Of the 33 schools in our research study, 27 had English language learners. Enrollment of ELLs in those 27 schools ranged from 1–42% of the student population, with an average of 15.6%. Our study found serious deficiencies in the levels of resources available to support these students.

Lack of Sufficient Qualified Instructional Personnel

A majority of the 27 schools that served ELLs lacked a sufficient number of appropriately certified ESL or bilingual teachers to provide the instruction required by the state to meet students' needs.

- Seven schools were unable to provide either the required language arts instructional time or the required content-area instructional support. Four other schools provided language-arts instruction but not content-area support.
- At five schools, between one-third and one-half of the teachers were not adequately trained or effective. At two of these schools, some ESL classes were taught by teachers not certified in ESL or bilingual education.
- Five schools lacked sufficient and appropriate translators to accommodate ELLs during state testing.
- At eight schools, because of staffing shortfalls, class sizes and/or instructional groupings were too large to meet ELLs' learning needs.
- Four schools with a shortage of ESL teachers could comply with state requirements only by pulling students out of classrooms for instruction rather than alternative approaches, including having ESL specialists in classrooms during regular class time.

Only three of the 27 schools had the necessary resources to provide personnel with required in-service training to enhance their appreciation for pupils' native languages and cultures and their ability to provide appropriate instructional and support services.

Lack of Appropriate Support Services

Most of the schools (24 of 27) lacked resources to provide ELLs with required student-support services.

- Seventeen schools had no bilingual guidance counselors, social workers, or school psychologists, though their ELLs needed such services.

- Three schools lacked appropriate access to bilingual staff, including school psychologists, to evaluate ELLs suspected of having disabilities and to communicate with families about special-education services.
- Six schools lacked either appropriate staff and/or materials to address the needs of ELLs who also required special-education services in their respective native languages.
- Eight schools were unable to provide their ELLs with any academic intervention services (AIS), additional instructional support for students struggling to meet standards.
- Three additional schools were unable to provide testing accommodations, materials in students' native languages, and/or necessary staffing for their ELLs who spoke languages other than Spanish.

Lack of Basic Instructional Materials

A large majority of schools (19 of 27) lacked instructional materials for their ELLs.

- In 15 schools, mainstream and/or ESL classrooms lacked appropriate written materials: they lacked texts with a sufficient range of reading levels for ESL instruction, grade-level appropriate science and social studies texts at reading levels that ELLs could use, and dictionaries. Their libraries contained few or no reading materials in languages other than English.
- One school had only one set of books for five sections of an ESL class, and students could not take them home to study.
- In three schools, staff spent up to \$1,000 per year of their own money on instructional materials.
- Thirteen schools lacked sufficient technology—hardware and software—to assess and deliver appropriate instruction for ELLs.

Lack of Appropriate Space for ESL Instruction

Ten schools lacked sufficient space to provide appropriate ESL instruction. Schools held ESL classes in makeshift spaces that were both too small and inappropriate for effective teaching and learning, including a copy room, a book-storage room, and a tiny school library room. One school held ESL class in a classroom where another group of students were receiving Response to Intervention instruction. In these spaces, students were less comfortable and more easily distracted.

Lack of Translation and Interpretation Services for Students' Families

The vast majority of schools (24 of 27) lacked adequate translation services to communicate with families with limited English proficiency. One elementary school serving close to 100 Spanish-dominant ELLs sometimes had no Spanish-speaking adults in the building. Staff relied on young students for translation. Other schools were able to offer some, but not sufficient, translation support, utilizing the language skills of school-based educators or district-level translators to facilitate communication in some languages and dialects spoken by their students' families.

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