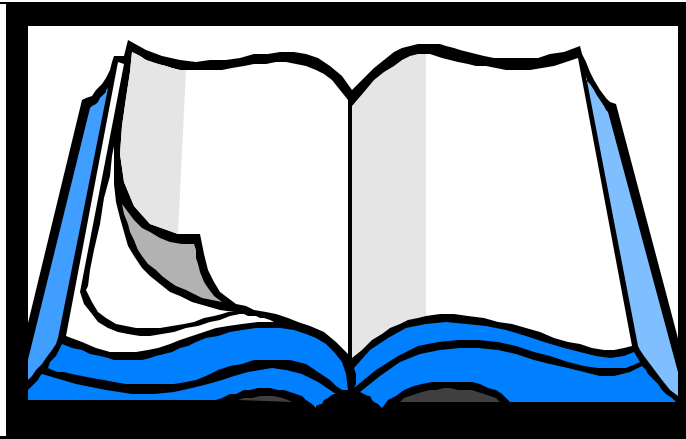


# KNOW YOUR RIGHTS

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a guide to  
the legal rights  
of immigrant  
students & parents  
in the new york city  
public schools

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advocates for children  
Immigrant students rights project

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Hotline: Tues, Thurs 10am-1pm

## I. Enrolling in School

### **At what age can a child attend school?**

Every child age 5 to 21 has the right to attend public school until he or she graduates from high school. New York State is in the process of making preschool universal. Currently, a child at age 4 may attend public preschool if space is available.

A child entering school in kindergarten must be 5 years old by December 31 of that year. An eligible child cannot be turned away from kindergarten or placed on a wait list for lack of space. In addition, a teenager cannot be turned away from high school or sent to a GED program just because of age or limited prior education. All children ages 5 to 21 applying for public school must be admitted immediately and within 5 school days.

### **Immigration Status does not matter**

Immigrant students have the right to attend school regardless of the immigration status of the child or of the child's family members. No one in the school may ask about the child's or family's immigration status. Although some school forms ask for a social security number, parents and students are not required to give this information. Students are entitled to receive all school services, including free lunch, free breakfast, transportation, and educational services, even if they or their family are undocumented and don't have a social security number.

### **How is a student initially placed?**

A student is placed in a grade according to his or her previous school record. If a student does not have any previous school records, the student has the right to be admitted immediately and initially placed in a grade appropriate for his or her age. The school is then responsible for contacting the student's former school and obtaining the school records. If a student has no existing records, the school should evaluate the child according to procedures outlined on page 3 under "What if an immigrant student has limited or no school experience?"

Parents of students entering high school may contact the Learning Support Center in your Division for more information on finding an appropriate placement or applying to high schools. (see back for listings and contact information)

## **School Choice**

Parents have a choice about what school their child attends. Children are initially assigned to their “zoned” school which is a school in their neighborhood. If a parent is dissatisfied with his or her child’s zoned school, the parent can apply for special permission, called a “variance”, to transfer his or her child to a different school.

Variances are sometimes difficult to get but are always possible. For more information on how to apply for different schools and for descriptions of different schools, visit this website sponsored by Advocates for Children: [www.insideschools.org](http://www.insideschools.org).

## **What if student has a school record or transcript from a school outside the U.S.?**

Students with foreign transcripts should have their transcripts translated either by the school they want to attend, the Department of Education (DOE), or an outside source. The purpose of the translation is to determine the student’s academic level or number of school credits. For elementary and junior high school students or high school students with foreign transcripts that the Department of Education (DOE) cannot translate, parents should seek a translation from the country’s embassy or consulate. Parents may also have a community organization or private service conduct the translation. Official transcript translations must meet the following guidelines:

1. Translations must be in the same format as the original
2. All information must be translated.
3. The translation must be verbatim.
4. No evaluation or analysis of information by the translator should be included.

The translation must be typed on agency stationery and must be signed by the translator. In the meantime, the student must be admitted to school.

## **What if an immigrant student has limited or no school experience?**

Students with little or no previous education have the right to immediate admission to a public school. In order to place such students and students without active school records, schools should:

1. compile a student profile
2. administer an oral diagnostic test in the student’s native language
3. administer subject area placement examinations
4. assign a class placement in collaboration with the appropriate person at school.

These procedures should be conducted by an admissions counselor or designee who speaks the student's native language and is knowledgeable about the student's cultural background. If this person determines that the student needs additional support services, he or she may make a referral to special education, a dual literacy program, or the high school admissions office.

### **What if a new immigrant student has a disability?**

If it is suspected that new immigrant student has a disability, the school can refer the student for a special education evaluation. Special education services are explained later on in this pamphlet. The Department of Education cautions schools not to refer new immigrant students to special education in their first 2 years in the U.S. to prevent inappropriate placement. However, parents have the right to request a referral of their child to special education at any time. If a student has a qualifying disability, he or she is entitled to special education services immediately, regardless of how long he or she has lived in the U.S.

### **Are there public schools in NYC specifically designed for new immigrant students?**

YES. You can search the [www.insideschools.org](http://www.insideschools.org) website or call Advocates for Children at (212) 947-9779 during hotline hours for information about all such existing programs in the city.

## **II. Services for Students Learning English**

All students, regardless of English proficiency, have the right to a public education. To receive an equal educational opportunity, students are entitled to specialized instruction addressing their language needs such as bilingual education or English as a Second Language (ESL) classes.

More information on these programs can be found at [www.nycenet.edu/Parents/Essentials/ELL/ELLFAQ.htm](http://www.nycenet.edu/Parents/Essentials/ELL/ELLFAQ.htm).

**Bilingual Education** is a program in which students learn academic subjects in their native language and in English.

The primary models of bilingual education in New York City are:

- (1) **Transitional bilingual education program.** Significant instruction may be given in English as well as in the student's native language. At first, significant instruction will be in the student's native language, with more instruction being given in English as the student becomes more proficient in English.

- (2) **Dual language program.** This model includes limited English proficient students and native English speakers in one classroom with the goal of developing proficiency in both languages for both groups of students. Dual language programs in NYC are primarily in Spanish and English, but exist for a few other languages as well, including Chinese.

**English as a Second Language (ESL)** is a program in which students learn to speak, read, and write English from a teacher trained to teach English. Students are instructed entirely in English. About one half of all new immigrants students are in ESL.

### Who is eligible for Bilingual Education/ESL?

When a child enters the New York city schools, his or her parents or guardians must complete a **Home Language Identification Survey (HLIS)** that asks about the languages used in the home and used by the child. If the responses to the HLIS indicate that a language other than English is spoken in the home, the child must take the **Language Assessment Battery- Revised (LAB-R)** Test in English to find out the level of the child's English abilities. All students who score below the set level on the LAB-R not only have the right but are also required to take either bilingual education or ESL. If a student scores below the set level on the LAB-R, the student must take the **New York State English as a Second Language Test (NYSESLAT)** once every year. When a student scores above the set level on the NYSESLAT, s/he will be referred out of bilingual education or ESL.

### English Language Learners (ELL) and Limited English proficient (LEP)

Students in New York City who score below the set level on the LAB-R and become eligible for bilingual education and ESL are designated as "English Language Learners" (ELL) or "limited English proficient" (LEP). Both terms mean the same thing, but "ELL" is now more commonly used.

### What if a parent disagrees with his or her child's LAB-R score?

If a parent doesn't believe that his or her child's LAB-R score accurately reflects the child's English abilities, he or she may request a re-test from the school district's bilingual /ESL coordinator or from the Department of Education's Division of English Language Learners & Parent Outreach at (212) 374-6072. The parent should be able to

explain why the test score is inaccurate or why conditions for the first test-taking were not appropriate. Students are rarely allowed re-tests on the LAB-R.

### **Can a parent choose between bilingual education and ESL?**

YES. Parents have the right to decide whether they want their child to take bilingual education or ESL. ELL students have the right to bilingual education but are required at least to take ESL. Not every school has the right kind of bilingual education class for every child. For example, a child may need a Korean bilingual class when his or her school doesn't offer one. If another school in the child's district offers the appropriate bilingual program for a child, the parent has the right to transfer the child to that school and to be provided free transportation for the child to attend the school.

If there is no bilingual program in a child's language in any school in the child's district, the child must take ESL. If a parent does not want his or her child in bilingual education, he or she can decide to place his or her child in ESL. Every school should have an ESL class.

If you want to find out what bilingual programs are available or where they are located, you can call your Regional Learning Support Center and speak with the ELL support staff there. Regional contact information can be found at the end of this booklet.

### **Are students entitled to have ESL programs tailored to their individual English language skills?**

YES. State law requires that ESL programs be designed to be appropriate for the student's particular English language abilities. Not every ESL student in one class has to receive the same ESL curriculum. For example, an ESL student with significantly more advanced English skills than his or her classmates is entitled to a more advanced ESL curriculum.

### **When are schools required to create bilingual education programs?**

Elementary and junior high schools that have 15 or more ELL students with the same native language in the same grade or 2 contiguous grades are required to create a bilingual program in that language. High schools that have 20 or more ELL students with the

same native language in one grade are required to create a bilingual program in that language.

### **Do parents have the right to notice and information regarding bilingual education and ESL?**

YES. Parents must be notified when their child is required to take bilingual education or ESL. They also have the right to (1) an explanation of the different program options, and (2) an orientation session on the state standards, assessments, school expectations and general program requirements for bilingual education and ESL. This orientation must be provided in the first semester of the child's enrollment in school. School districts must also make an effort to meet with parents at least twice a year to help them understand the goals of the program and how they might help their children.

**All information should be provided in the parent's or guardian's native language when needed.**

### **III. Gifted and talented programs**

All students regardless of English proficiency may apply for gifted and talented programs. Gifted and talented programs are "enriched and expanded" programs for students with advanced skills or special talents. Parents have the right to receive information about gifted and talented programs in their native language when needed. Parents should seek this information from the school or school district. Gifted and talented programs are different from special education programs.

### **IV. Parent Rights**

#### **are parents entitled to receive school-related information in their native language?**

YES. Parents and guardians of any student have the right to receive school related information in their primary language. For example, parents have the right to have meetings orally interpreted and have notices and letters translated. Interpretations and translations must be accurate and appropriate. For example, a Cantonese speaker may not be an appropriate interpreter for a parent who speaks primarily Fujianese.

A parent who needs information interpreted or translated should request this service from the school district or region. If the school

district or region doesn't provide the service, the parent may contact the Office of English Language Learners at (212) 374-6072. Parents often do not receive the translation and interpretation services they need. If you have or know of this type of problem, call Advocates for Children at (212) 947-9779.

### How can parents become involved in schools and school governance?

Parents have many ways to participate in deciding how schools are run and how their children are educated.

**(1) Parent Coordinator.** The parent coordinator is responsible for helping to address parent concerns and supporting parent involvement in the schools. Contact the parent coordinator at your school for more information or with specific concerns, etc.

**(2) School Leadership Teams.** Every New York City public school is required to have a School Leadership Team. Half of this team must be parent members elected by other parents. The team is responsible for designing the school's Comprehensive Education Plan (CEP) which governs key policies including the school's budget, curriculum, parent involvement, and staff development.

**(3) Parent Associations (PA)** . Every school must have a PA that is controlled by parents or by parents and teachers. The PA has the right to obtain complete information about a school's operation and student achievement levels. The PA also has the right to be consulted by the school in all decisions about the schools operation including budget, hiring, and curriculum decisions. However, PAs cannot make final decisions about school operation.

**(4) Title I.** Parents can also participate through Title I programs, a federal program for raising the achievement levels of low-income and minority children, including English Language Learners. Title I provides extra money to schools with a high percentage of low-income or minority children.

Title I requires that parents be directly involved in deciding how funds are used in the school. Funds can be used for a wide range of things including afterschool programs, tutoring, and parent trainings. Every Title I school must have a written policy describing how parents can participate in Title I planning. For more information on how to get involved with designing and funding Title I programs, contact the parent coordinator in your school.

## V. Promotion & Graduation Policy

### Promotion Requirements

In the New York City public schools, students in grades 3 to 12 are promoted to the next grade based on an assessment of 3 criteria. Students should not be held back based on just one of these areas but based on a combination of these criteria. The 3 criteria are:

- 1. Standardized Tests.** Students must pass citywide tests in reading and math. The possible scores on these tests are 1, 2, 3 or 4 with 1 being the lowest. A score of 2 allows a student to pass this criterion.
- 2. Student work.** Students must meet performance standards as demonstrated through their school work, teacher observations and grades.
- 3. Attendance.** Students must have a record of attending school for at least 90% of the school year.

The performance standards for student work for each grade are explained in detail in the Department of Education pamphlet, ***What Did You Learn in School Today?*** A different pamphlet is available for each grade. The pamphlet is also available in Spanish, Chinese, Haitian, Russian, Korean, and Bengali. You may request this pamphlet from the school, district, or region.

### Exemptions & modifications of criteria

The following two groups of students are exempt from the promotion criteria:

1. Students who are enrolled in bilingual education or ESL and have been in a U.S. public school for less than 2 years.
2. Special education students whose Individualized Education Programs (IEPs) state they are exempt from the promotion policy. The IEP may modify promotion standards for the student.

ELL students are subject to modified promotion criteria in the areas of standardized tests if they have been enrolled in bilingual education or ESL for 3 years or less. The modified criteria vary according to the student's grade and whether they are in bilingual education or ESL. For more details on modified criteria, please refer to Chancellor's Regulation A-501. You can obtain this regulation from the DOE website at [www.nycenet.edu](http://www.nycenet.edu). You may also call Advocates for Children at (212) 947-9779.

### Parent Notification

Parents should be notified if their child is at risk of being held over at three different times:

1. at the Fall Parent Teacher Conference
2. in writing by January 31
3. in writing by regular mail at least 10 school days before the end of the school year.

Failure to notify the parent is not a reason to promote the child.

### Appeals

Parents may appeal the decision to retain their child by writing to the principal within 3 school days of receiving the mailed notice at the end of the school year. The principal must respond in writing within 3 school days. The parent may then appeal to the superintendent within 5 school days. The superintendent has 5 school days to respond in writing.

### Graduation Requirements

In order to graduate from high school, students must:

1. Complete 40 credits,
2. Attain 90% attendance, and
3. Pass five Regents Examinations which will gradually be phased in each year. The Regents examinations a student must pass depends on when the students enters 9th grade. The Regents exam requirements are outlined below:

<u>Year ENTERING 9th grade</u>	<u>Required Regents Exams</u>
1996	English
1997	English & Math
1998	English, Math, Global History & U.S. History and Government
1999-2003	English, Math, Global History, U.S. History and Government, Science

ELL students who have been in the U.S. less than 3 years may take the Regents exams in their native language where available. All ELL students must pass the English Regents exam. The other Regents exams are available in Spanish, Chinese, Russian, Haitian, and Korean.

## VI. Student Suspensions

Students may be suspended from school if they are seen as a danger to themselves or others. Suspensions should never be used as punishment. The rules for student behavior are outlined in

the pamphlet entitled ***Citywide Standards of Conduct and Uniform Disciplinary Measures (The Discipline Code)***. A student cannot be excluded from school unless the school follows required suspension procedures. In addition, students cannot be involuntarily transferred for a suspension.

There are 2 kinds of suspensions: principal's suspensions and superintendent's suspensions. Principals' suspensions can last no longer than 5 school days and cannot be given more than 2 times in one school year. Superintendents' suspensions can last any length of time and may result in transfer to another school or expulsion. There is no limit to how many superintendent's suspensions a child can receive.

For both types of suspensions, parents have the right to immediate oral and written notification of the suspension with the specific charges against the student. Parents also have the right to all documented evidence against their child and a conference or hearing. Students have the right to receive all homework, classwork and alternative instruction during the suspension. Parents and students have the right to representation at suspension hearings. To request representation, you may call Advocates for Children at (212) 947-9779, New York Legal Assistance Group at (212) 750-0800, or Legal Services for New York City at (212) 431-7200.

## VII. School Records

Parents have the right to access all of their child's school records. High school students 18 or older have the right to access all of their school records. Schools must produce these records immediately upon the parent's or high school student's request but no later than 45 calendar days. Parents have the right to appeal or amend any information in their child's records.

## VIII. The Rights of Students with Disabilities

### **What if a student has a disability?**

A child with a disability may be eligible for special education services or services under Section 504. Section 504 provides mostly accommodations that allow a child to participate fully in all school activities (e.g., wheelchair ramp, special writing equipment,

medication). Special education services include mainly teaching methods and instructional services. Some students may qualify for both special education and section 504. For more information on Section 504, see *Advocates for Children's guide on Section 504*. In addition, infants and toddlers age 0 to 3 with developmental delays are entitled to evaluations for Early Intervention (EI) Program services. Call (800) 577-2229 for a referral to EI.

### **What is special education?**

Special education is specialized instruction for students ages 3 to 21 with disabilities that interfere with their learning. Such learning disabilities can range from minor problems like reading difficulties to very severe disabilities. Special education can include a wide range of services delivered to students in regular classrooms such as counseling, resource room, paraprofessional services, physical therapy, speech therapy, assistive technology, special curriculum, and other services. These types of services are known as "related services." Special education students can be in a general education classroom with non-disabled students with related services or in a separate classroom with all disabled students.

### **What is "Least Restrictive Environment"?**

The law requires that students receiving special education be educated in the "least restrictive environment." This means that, whenever appropriate, students with disabilities are provided with the supports, services, and physical accommodations they need to progress in the general education curriculum in general education classes in their neighborhood schools.

### **How do students receive special education services?**

A parent can request in writing that his or her child be referred and evaluated for special education. A school can also refer a child to special education. However, the school referral must be in writing and it must document the ways in which the school tried to help the student through regular education services (e.g., ESL, tutoring, afterschool programs, behavior strategies) before considering special education. A student cannot be referred to special education just because they don't speak English well. After a child is referred, he or she must be evaluated. However, no child can be evaluated for special education without the parent's informed consent. An ELL child must receive a

bilingual evaluation.

After a child is evaluated, the parent meets with a team of professionals (either the School Based Support Team (SBST) or the District's Committee on Special Education (CSE)) to determine eligibility for services.

If a student is determined to be eligible for special education services, he or she will be given an Individualized Education Program (IEP) that specifies the services and educational goals for the student. If the parent and the school disagree about special education services, either party can request an impartial hearing.

### **Translation and Interpretation for parents of special needs children**

Parents have the right to have all IEPs, evaluation results, and notices regarding special education translated into their native language when needed. Parents also have the right to have interpreters at any meetings. Parents may request these translation and interpretation services from the school district or region.

### **What if a child needs special education and is an English Language Learner?**

A special education student who scores below the set level on the LAB-R is entitled to bilingual special education services or ESL in special education. Some students with severe disabilities (e.g., severe mental retardation or autism) are exempt from taking the LAB-R. These students are eligible for bilingual services/ESL if their Home Language Identification Survey shows a home language other than English and their bilingual evaluations recommend bilingual or ESL services.

### **Can a special education student who scores below the set level on the LAB-R be exempt from bilingual services or ESL?**

YES, but only if the IEP team, including the parent agrees. This can happen but does not happen often. The LAB-R test score of a special education student may be the result of a disability rather than limited language skill. For this reason, the IEP team may determine that the student does not require bilingual services. The IEP team and parent should consider multiple factors and not just the LAB-R score when making this decision. However, sometimes an IEP team will want a parent to agree to an exemption because bilingual services are hard to obtain. If a parent does not want his or her child

exempted, he or she can refuse to consent to an exemption.

The IEP team may determine that a child needs bilingual services or ESL in certain areas but not in other areas. For example, a Spanish speaking special education student may be provided a bilingual Spanish and English class setting with monolingual English speech therapy. An IEP team must decide the language for service in a particular area based on a specific consideration of the child's need in that area. However, no decision about a service or the language of a service is final until the parent consents.

### **What if a bilingual special education class is not available?**

If a student requires bilingual special education services, but the Department of Education (DOE) cannot provide the appropriate bilingual special education class, the student may be temporarily placed in a monolingual English special education class with a bilingual paraprofessional. The purpose of the paraprofessional is to interpret for the student in class. If the DOE cannot provide an appropriate bilingual class after a certain amount of time, the parent is entitled to a private school for the child at public expense. A child is entitled to a private school if he or she has been denied an appropriate placement for over 60 school days following (1) the date of consent to evaluation (if the child is just beginning special education) or (2) following the date of referral for an IEP review (if the child was already in special education). After this time, the child's parent is entitled to a P-1 letter or "Nickerson" letter authorizing the parent to place the child in a New York State approved private school. The parent may request this letter from the Committee on Special Education (CSE). If the CSE does not provide the parent with the letter, the parent can request an impartial hearing to obtain the letter. The DOE is obligated to continue looking for an appropriate public school placement until the parent finds a private school.

Finding an appropriate non-public school placement may be difficult because there are few private schools offering bilingual special education. Therefore, if possible, before requesting a Nickerson letter, a parent should try to identify a private school that will admit his or her child.

### **What if a bilingual paraprofessional or related service is not available?**

Sometimes, the DOE fails to provide a bilingual paraprofessional for an ELL child in an English speaking interim placement. In this situation, the child does not have any language assistance and may not understand anything in the class. If this happens, the parent can request an impartial hearing or file a state administrative complaint to force the provision of a bilingual paraprofessional as soon as possible. The parent may also request a Nickerson letter if the 60 school days have passed.

If a child requires a bilingual related service such as speech therapy and no bilingual service is available, the parent is entitled to obtain a related service authorization (RSA) letter that allows the parent to obtain the appropriate bilingual service outside the DOE. The parent can request the RSA letter from the regional CSE. Parents can also request an impartial hearing to seek an order for the DOE to provide the appropriate service. To request an impartial hearing,

write to: Impartial Hearing Office  
 Department of Education  
 131 Livingston St., Room 201  
 Brooklyn, NY 11201  
 Tel. 718-935-3280  
 Fax. 718-935-2528

Parents have the right to an interpreter at impartial hearings and should request one before the hearing.

To file a state complaint, submit a written explanation of the facts and violation of law to:

Office of Vocational Educational Services for  
 Individuals with Disabilities  
 New York State Education Department  
 One Commerce Plaza, Room 1624  
 Albany, NY 12234

## **IX. Complaints of Discrimination**

The law prohibits discrimination or harassment based on race, color, religion, creed, national origin, alienage, citizenship status, age, marital status, disability, sexual orientation, gender, and prior record of arrest or conviction in the public schools. If you feel that you have been subjected to such discrimination or harassment, you may file a complaint with any of the following agencies:

NYC DOE Office of Equal Opportunity (718) 935-3320  
 U.S. Department of Education Office for Civil Rights (800) 421-3481  
 New York City Commission on Human Rights (212) 306-7500

## X. Contact Information

**Learning Support Centers:** This is where you will find Division Superintendents, Local Instructional Superintendents, Parent Support Teams and Directors of Student Support Services. The staff members in the parent support office are there to help parents with any school-related questions, including those regarding ELLs.

Region	Superintendent	Districts	Learning Support Center	Telephone #
2	Laura Rodriguez	8, 11, 12	1230 Zerega Avenue Bronx 10462	718-828-2440
4	Reyes Irizarry	24, 30, 32	28-11 Queens Plaza North Long Island City, 11101	718-391-8300
6	Gloria Buckery	17, 18, 22	5619 Flatlands Ave. Brooklyn, 11234	718-968-6100
8	Marcia Lyles	13, 14, 15, 16	131 Livingston Street Brooklyn, 11201	718-935-3900
10	Lucille Swarns	3, 5, 6	4360 Broadway Manhattan, 10033	917-521-3700

For a full listing of the DOE's departments and personnel, go to [www.nycenet.edu](http://www.nycenet.edu).