



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Delaware

VIA EMAIL

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Re: Constitutional Obligations to Multi-Language Learners

Dear Members of the Delaware General Assembly,

Since 1961, the American Civil Liberties Union of Delaware (ACLU-DE) has steadfastly protected Delawareans from violations of their constitutional and civil rights. We write on behalf of the residents of Delaware. This letter expresses our growing concern about the status of public school students in Delaware, specifically the constitutional rights of multi-language learners (MLLs, also sometimes referred to as English Language Learners, ELLs, English Learners, or ELs) across educational institutions in our state.

State law guarantees Delawareans access to an “efficient system of free public schools.” This provision has a qualitative dimension that “obligates Delaware to maintain a system of public schools that meets a constitutionally mandated level of educational adequacy.”¹ Additionally, all residents are promised “equality of rights under the law” regardless of “race, color, national origin, or sex.” In sum, **Delaware cannot deny any child access to an adequate education, nor do so based on their immutable characteristics.**

Nonetheless, a 2018 lawsuit by ACLU-DE, Community Legal Aid Society, Inc (CLASI), Delawareans for Educational Opportunity, and the National Association for the Advancement of Colored People of Delaware (NAACP-DE) revealed critical structural deficiencies in the way Delaware raised and allocated education funding. Among many notable outcomes from the landmark case were 1) the establishment of Opportunity Funding for the MLL and low-income students and 2) the commission of an independent report by the American Institutes for Research (AIR) to provide an unbiased expert evaluation of Delaware’s public school funding program and identify how the state may act to immediately remedy funding deficits for students. The report categorically showed that Delaware schools were inadequately funding students with disabilities,

¹ [*Delawareans for Educ. Opportunity v. Carney*, 199 A.3d 109, 140 \(Del. Ch. 2018\).](#)

MLLs, and low-income students by approximately \$600 million to \$1 billion. AIR issued this incontrovertible and damning report nearly three years ago.

Despite this alarming report about the significant underfunding that vulnerable students face in Delaware public schools, the General Assembly has thus far allocated only an incremental addition of \$66 million in Opportunity Funding over the previous six years to support these students MLLs and other disadvantaged students.² Not surprisingly, given the state's decision to allocate a meager fraction of the hundreds of millions of dollars required to address these serious constitutional violations, students have suffered across the board. The state has not even remotely met its ambitious goals to improve educational achievement in Delaware schools. Despite the steadfast efforts of teachers, many young people do not receive an effective education due to lack of resources.

Among the victims of these deficiencies are MLL students in all three of Delaware's counties, across its 19 school districts. MLLs are often isolated in their schools, receive insufficient instruction on core subjects, and have limited pathways for seeking support. Schools also lack sufficient administrators and educators with expertise in MLL education to appropriately assist students in their learning. MLLs are suffering from the aforementioned issues because they descend from countries with primary languages other than English. Thus, 1) the state is denying them their right to an adequate education in violation of the constitution and 2) the state's denial is a function of their identity and national origin. **This is unacceptable and unconstitutional. To avoid a lawsuit, the state of Delaware must remedy these violations immediately.**

Delaware's Legal Obligations under the State Education Clause

When Delaware's Constitution was amended in 1897, the framers enshrined in it a provision creating a public school system: "The General Assembly shall provide for the establishment and maintenance of a **general and efficient** system of free public schools and may require by law that every child, not physically or mentally disabled, shall attend the public school, unless educated by other means."³

² Wendy Lecker, *Settlement in Delaware School Funding Litigation Yields Major Reforms for Vulnerable Students*, Education Law Center (Oct. 15, 2020), <https://edlawcenter.org/settlement-in-delaware-school-funding-litigation-yields-major-reforms-for-vulnerable-students/>.

³ Del. Const. art. 10, § 1.

In the 2018 *Delawareans for Educational Opportunities* lawsuit, the Delaware Court of Chancery ruled that Delaware’s education system **must adequately educate the students in its care**.⁴ In recognition of the expertise of the Delaware Department of Education and the evolving nature of best practices in education, the Court would consider policies established by the General Assembly and the Governor when determining the standard of adequacy, so long as they establish legitimate criteria.⁵ The court is nonetheless free to consider other factors when determining the constitutional standard for educational adequacy and whether the government has met it.⁶

Delaware’s Legal Obligations under the State Equal Rights Amendment

Along with the Education Clause’s qualitative requirement, the Delaware Constitution also guarantees its residents equal treatment under the law. Article 1, Section 21 states: “Equality of rights under the law shall not be denied or abridged on account of race, color, **national origin**, or sex.”⁷

The newest incarnation of this amendment has been in place for only six years, so courts have not yet fully analyzed precisely what the constitutional provision requires with respect to education access and funding. Delaware courts have a unique and proud history of being on the vanguard of educational equality.⁸ Given that history, combined with the holding in *Delawareans for Educational Opportunity*, it is likely that Delaware courts will adopt an expansive interpretation of the Equal Rights Amendment as it pertains to educational disparities of the sort experienced by multi-language learners.

Statistical Evidence of Inadequacy of MLL Education in Delaware under the State Constitution

The harms inflicted on MLLs throughout the state bear mentioning.

⁴ *Carney*, 199 A.3d at 140 (2018).

⁵ *Carney*, 199 A.3d 109 at 166 (2018).

⁶ “Consequently, I believe that the proper course in this case will be for the court to look first to the standards that the General Assembly and the Delaware Department of Education have chosen. The parties will have to establish what standards govern this case. The plaintiffs have alleged sufficiently for pleading purposes that the testing standards used to measure grade-level proficiency are a suitable metric to use. There are likely other components. For its part, the State suggested at the end of oral argument that the test standards did not measure grade-level proficiency, but were aspirational standards designed to push for greater student achievement. The statutory language directing the Delaware Department of Education to establish standards for grade-level proficiency does not support that contention,³¹⁴ but if it proves to be the case, I would take that into account.”⁶ *Carney*, 199 A.3d 109 at 166 (2018) (emphasis added).

⁷ Del. Const. art. 1, § 21.

⁸ See *Belton v. Gebhart*, 87 A.2d 862 (Del. Ch.), aff’d, 91 A.2d 137 (Del. 1952), aff’d sub nom. *Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294 (1955).

The federal Every Student Succeeds Act (ESSA) was designed to ensure that “all students in America be taught to high academic standards that will prepare them to succeed in college and careers.”⁹ Under the ESSA, the state sets various benchmarks for improvement among student demographics. The 2023 Delaware ESSA plan outlines several benchmarks for MLL students. One such benchmark is the Attainment Target for English Language Proficiency.¹⁰ When new MLLs enter the education system, they are given an assessment test to determine their ability to read, write, and understand English.¹¹ The assessment determines if the student is proficient in English, which means they can take courses given in English without their learning experience being impacted by English not being their first language. If the student is not immediately proficient in English at the time of their arrival, the school will establish a track for that student to reach proficiency over the next 1-6 years.¹² The state sets a yearly goal for percent of MLLs “on track” for their respective proficiency goals. The state tracks similar data for scores on content assessments for Language Arts and Mathematics. The following charts reflect the percent of MLLs who met their progress goal in each subject, relative to the state’s goal for students “on track” in English Language Proficiency, Language Arts, and Mathematics.

MLL English Language Proficiency Progress¹³

School Year	MLL Expected Progress Rate	MLL Actual Progress Rate	MLL Difference from Expected
2021-2022	54.6%	38.33%	-16.27%
2022-2023	57.8%	52.33%	-5.47%
2023-2024	60.3%	42.64%	-17.66%
2024-2025	62.5%	45.96%	-16.54%
Average	N/A	N/A	-13.99%

Between the 2021-22 and 2024-25 school years, MLLs were 16.27%, 5.47%, 17.66%, and 16.54% behind on the progress goals set by the state.

⁹ *Every Student Succeeds Act (ESSA)*, U.S. Department of Education (Sept. 23, 2025), <http://www.ed.gov/laws-and-policy/laws-preschool-grade-12-education/every-student-succeeds-act-essa>.

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¹¹ “Delaware uses WIDA Screener for Kindergarten and WIDA Screener Online (for Grades 1-12) to identify English language learners (ELLs). WIDA ACCESS is given to all ELLs during the annual testing window, which typically takes place from early February to late March.” *Delaware*, WIDA: UNIVERSITY OF WISCONSIN- MADISON (2026), <https://wida.wisc.edu/about/consortium/de>.

¹² Susan Bunting & Mark Holodick, *Delaware Consolidated ESSA Plan (2023)*, page 13, https://education.delaware.gov/wp-content/uploads/2023/11/DE_consolidatedstateplan_redlined-RLIS-10.27.2023.pdf.

¹³ *Progress Towards Long-Term Goals in English Language Proficiency-By Year, Delaware Report Card (2025)*, <https://reportcard.doe.k12.de.us/detail.html#displaypage?scope=state&district=0&school=0&id=802>.

As demonstrated below, Delaware’s failure to effectively teach MLLs English comprehension likely limits the ability of MLLs to progress in other content courses.

MLL Language Arts Progress¹⁴

School Year	MLL Expected Progress Rate	MLL Actual Progress Rate	MLL Difference from Expected	General Student Difference from Expected ¹⁵
2021-2022	62.36%	16.04%	-46.32%	-20.25%
2022-2023	64.07%	15.24%	-48.83%	-23.3%
2023-2024	65.78%	14.17%	-51.61%	-24.89%
2024-2025	67.49%	13.55%	-53.94%	-25.44%
Average	N/A	N/A	-50.18%	23.47%

MLL Math Progress¹⁶

School Year	MLL Expected Progress Rate	MLL Actual Progress Rate	MLL Difference from Expected	General Student Difference from Expected ¹⁷
2021-2022	53.24%	13.17%	-40.07%	-23.97%
2022-2023	55.37%	13.86%	-41.51%	-24.47%
2023-2024	57.49%	13.38%	-44.11%	-26.76%
2024-2025	59.62%	13.61%	-46.01%	-27.89%
Average	N/A	N/A	-42.93%	-25.77%

Across the past four school years, the general Delaware student population has lagged behind ESSA progress goals in Mathematics by an average of 23.47% and in Language Arts by an average of 25.77%. During the same period, the MLL student population suffered a deficit of almost double that: an average of 50.18% behind their goal in English Language Arts and 42.93% behind their goal in Mathematics. Year by year, Delaware MLLs have produced educational outputs indicative of a

¹⁴ Progress Towards Long-Term Goals in ELA-By Other Characteristics - English Learners, Delaware Report Card (2025), <https://reportcard.doe.k12.de.us/detail.html#displaypage?scope=state&district=0&school=0&id=775>.

¹⁵ Progress Towards Long-Term Goals in ELA-By Year, Delaware Report Card (2025), <https://reportcard.doe.k12.de.us/detail.html#displaypage?scope=state&district=0&school=0&id=772>.

¹⁶ Progress Towards Long-Term Goals in Math-By Other Characteristics - English Learners, Delaware Report Card (2025), <https://reportcard.doe.k12.de.us/detail.html#displaypage?scope=state&district=0&school=0&id=770>.

¹⁷ Progress Towards Long-Term Goals in Math-By Year, Delaware Report Card (2025), <https://reportcard.doe.k12.de.us/detail.html#displaypage?scope=state&district=0&school=0&id=767>.

severely underfunded learning environment. Based on this data, there is no legitimate dispute that Delaware has severely and harmfully underfunded the education of multi-language learners in our state.

Descriptive Evidence of Inadequacy of MLL Education in Delaware under the State Constitution

Mirroring the 2018 lawsuit, there is also significant qualitative evidence reflecting various resource and funding deficiencies directly impacting the districts responsible for teaching MLLs. In many districts, teachers certified in English Language education are required to handle several classes of MLL students, often with a mix of various levels of English proficiency. Rather than establish robust requirements for specialized certification in English language education for teachers responsible for MLL English language acquisition, Delaware often requires overburdened MLL educators and unqualified paraprofessionals to try to make up the difference. There are also too few administrators specializing in MLL education to optimize the system for MLL teachers, which compounds the difficulties faced by MLL educators through improper policy design. Failure by the state to invest in MLL leadership and educators results in MLL students receiving ineffective instruction, insufficient time with MLL specialists, and imprecise policies that worsen the experience of an already disadvantaged population.

The MLLs most vulnerable to the worst effects of this resource-starved system are newcomers in middle and high school. Many MLL new arrivals may also come from educational systems without compulsory secondary education, and may be limited in their own native language. Although Delaware provides a “home language survey” to learn which languages a student and their family speaks, Delaware does not carry out comprehensive assessments of MLL native language competency to determine their sophistication.¹⁸ This dearth of information denies administrators the resources to properly slot MLL students into the best respective learning environment for each. It also does not adequately address the needs of MLL students who may have a disability and need more intensive intervention. As a result, students are being placed in situations where their chances of success are slim to none, and teachers do not have the information and resources to adequately assist them.

¹⁸ 14 Del. Admin. Code § 920-2.0; See *Delaware Department of Education English Learner Guidebook* (2024), page 26, <https://education.delaware.gov/legacy/wp-content/uploads/sites/4/2025/02/el-guidebook-updated-1-2024.pdf> (explaining the language evaluation process in detail) ; See also *Home Language Surveys – Legacy Pages*, <https://education.delaware.gov/legacy/home/instruction-and-assessment/standards-and-instruction/multilingual-learners/home-language-surveys/> (last visited Mar. 29, 2026). (showing links to various examples of Home Language Surveys).

Essential resources for translation, such as the Delaware Language Line and a database to track MLL students, have faced budgetary cuts for the 2027 fiscal year.¹⁹ Additionally, Infinite Campus, which is the administrative information server hosting report cards, individualized education programs (IEPs), evaluation reports, and other critical academic documents does not offer comprehensive translation. Translation limitations separate MLL students and families from their school district communities. MLL families frequently miss out on communications about school events and opportunities, such as graduation photos or Senior Skip Days. Additionally, they may be unprepared or confused during more important occasions, like emergency drills. Further, some MLL families with students who also have a learning disability struggle to secure a proper individualized education program (IEP), or to understand its impact, because districts lack sufficient language services and MLL specialists with subject-matter expertise to explain IEPs and assist in the process.

Conclusion

Delaware's treatment of multi-language learners is unconstitutional and structurally discriminatory. It compounds pre-existing inequities and denies vulnerable Delawareans a meaningful opportunity to thrive and contribute to the state. These problems are urgent. But Delaware can remedy them, by immediately appropriating necessary funding, and dramatically recalibrating education policies for MLL students. Under the provisions of the Delaware Constitution, remedial action for MLLs is not optional; it is mandatory. Failure to address this urgent crisis will necessitate a lawsuit to compel the state to comply with its constitutional obligations.

The ACLU-DE and our partners have waited patiently for leaders to take action to remedy these longstanding issues. The original lawsuit was filed after decades of discussion—but little action—to address the historical underfunding of our public schools. When we settled our lawsuit in 2020, we did so with the understanding that the Opportunity Funds would be a welcome first step towards bridging the equity gap for students, and that an independent report from a well-respected research group would provide a roadmap for officials to take swift action. Sadly, Delaware has not held up its end of the bargain.

Every day that the children of Delaware wait for more resource is another day their chances to reach their highest potential is are thwarted; and in

¹⁹ Kelly Powers, *Delaware Educators Fear Budget Cuts May Shortchange English Learners*, The News Journal (Mar. 18, 2026), <https://www.delawareonline.com/story/news/education/2026/03/18/delaware-educators-fear-budget-cuts-may-shortchange-english-learners/89192363007/>.

doing so, the state roundly violates the constitutional rights of some of our state's most vulnerable residents. Delaware needs to act immediately. If it doesn't, we stand ready to take state officials back to court. We hope that this letter inspires elected officials to act quickly with the remaining legislative days in 2026, and/or to call a special session to address these significant issues. Delaware's children would be far better served if these systemic issues could be addressed without the need for another lawsuit. But we will not continue to stand by, waiting years for the state to deliver on the moral and constitutional promise of an equitable education for all children.

Sincerely,

Oluwatobi Omotoso
Education Equity Fellow
ACLU of Delaware

Maria Matos
President and CEO
Latin American Community Center (LACC)