

Amendments to Commissioner’s Regulations Part 154: Services for English Language Learners



Fact Sheet No: 14-20

October 2014

At its September 2014 meeting, the Board of Regents unanimously adopted amendments to Part 154 of the Commissioner’s Regulations, effective October 1, 2014. This fact sheet provides a summary of the amendments. For a copy of the complete Regulation go to: <http://www.regents.nysed.gov/meetings/2014/September2014/914p12a3.pdf>

Subparts 154-1 and 154-2 require school districts to assure students with limited English proficiency (hereinafter referred to as "English Language Learners"(ELLs)) are provided opportunities to achieve the same educational goals and standards established for all students. Subpart 154-1 describes school district responsibilities for ELLs prior to the 2015-2016 school year. Subpart 154-2 describes program and service requirements school districts must comply with for English Language Learners in the 2015-2016 school year, and thereafter.

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What’s New in 2015-16

- ◆ School districts are not only expected to annually identify ELL students not making adequate language and/or academic progress they are now required to identify the academic and social/emotional supports they will provide, based on their identified needs.
- ◆ School districts are required to implement a bilingual class based on the number of ELLs who speak the same language in the district, not in a particular building.
- ◆ School districts must provide all teachers and administrators professional development to meet the needs of ELLs.
- ◆ School districts may now use additional criterion to determine whether an ELL student is ready to exit ELL services, including a combination of a student’s NYSESLAT score and 3-8 ELA assessment score, or ELA Regents scores.
- ◆ Procedures requiring the Committee on Special Education to determine whether students who have, or are suspected of having a disability should be identified as an ELL and receive bilingual or ESL programs and services.

The Subpart 154-2 amendments in effect in the 2015-16 school year and thereafter pertain to the following specific areas and are described further below:

- Identification Process
- Parent Notification and Information
- Retention of Identification and Review of Records
- Placement
- Program Requirements and Provision of Programs
- Grade Span and Program Continuity
- Exit Criteria
- Support Services and Transitional Services
- Professional Development
- District Planning and Reporting Requirements

The amendments also clarify that charter schools must implement either the provisions of Part 154 or an alternative language instruction educational program based on research and approved by their charter entity.

Identification Process

- School districts are required to implement a four step ELL identification process involving qualified staff:
 - (1) Administration of the Home Language Questionnaire;
 - (2) An individual interview with the student;
 - (3) A determination for students with a disability of whether the disability is the determinant factor affecting the student's ability to demonstrate proficiency in English; and
 - (4) The administration of a statewide English language proficiency identification assessment.
- An additional step has been added to the identification process for an ELL with a disability. Districts are now required to determine whether disability is the determinant factor affecting ability to demonstrate proficiency in English.
- Districts are required to identify Students with Interrupted Formal Education (SIFE)¹.
- Qualified staff is defined as a bilingual or ESL teacher, or a teacher trained in cultural competency, language development and the needs of English Language Learners.

Parent Notification and Information

- School staff are required to meet with parents or persons in parental relation at least once a year, in addition to other generally required meetings with parents, to discuss with parents their child's academic content and language development progress and needs.

Retention of Identification and Review of Records

- Districts are required to retain:
 - Records indicating parents' preferred language or mode of communication
 - Notices and forms generated during the identification and placement process in ELL student's cumulative record.

¹ NYSED defines the SIFE population as those LEP/ELLs who:

- Come from a home in which a language other than English is spoken and enter a school in the United States after grade 2; and,
- Have had at least two years less schooling than their peers; and,
- Function at least two years below expected grade level in reading and mathematics; and,
- May be preliterate in their native language.

Placement

- School districts are required to place eligible ELL students in a Bilingual Education/ESL program within 10 school days after initiating the identification process. Districts must complete the identification process before an ELL student receives a final school placement.

Program Requirements and Provision of Programs

- School districts are required to offer English as a Second Language instruction through two options, based on the student's level of English proficiency:
 - (1) Integrated ESL (ESL methodologies in content area instruction co-taught or taught by a dually certified teacher); and/or
 - (2) Stand-alone (ESL instruction with an ESL teacher to develop the English language needed for academic success).
- Bilingual Education Program Requirements:
 - School districts must make annual estimates of ELL enrollment before the end of each school year. In the event that the annual estimates identify 20 or more ELLs of the same grade level who speak the same home language district wide, districts will be expected to create a sufficient number of Bilingual Education programs in the district to serve these students.
 - Each school building with 20 or more ELL students of the same grade who speak the same home language must continue to provide a Bilingual Education program.
 - If the school district can demonstrate extenuating circumstances in meeting this requirement, it can apply for a one-year waiver for languages representing low incidence languages (less than 5 percent of the statewide ELL population).
 - New bilingual programs resulting from districts reaching 20 or more students in one grade level who speak the same language, should not be placed in a school that has been identified as a Schools Under Registration Review or as a Focus or Priority School.

Grade Span and Continuity

- School districts must provide program continuity so that ELLs continue to receive the program type (Bilingual Education or ESL) in which they were initially enrolled. Schools must continue to provide a Bilingual Education program if at least 15 students who speak the same home language were enrolled in such program in the previous grade.
- The maximum allowable grade span for grouping instruction in ESL-both stand alone and integrated- and Bilingual Education programs is two contiguous grades.

Exit Criteria

- School districts must consider one or more of the following criteria in making a determination that a student should no longer be identified as an ELL.
 - (1) Scoring proficient on the statewide English language proficiency assessment;
 - (2) Combination of NYSESLAT scores and 3-8 ELA assessment or ELA Regents scores; or
 - (3) Determination that an ELL with a disability cannot meet criteria (1) or (2) because of their disability, and are not in need of ELL services.

Support and Transitional Services

- School districts are required to annually identify ELLs not demonstrating adequate performance, and provide additional supports such as AIS aligned to district wide intervention plans.

- School districts shall provide at least two years of transitional supports to students who are no longer eligible as an ELL. For example, transitional services may include bilingual instruction or ESL services.

Professional Development

- School districts must ensure that:
 - 15 percent of professional development hours for all teachers and administrators be specific to the needs of ELLs, language acquisition and cultural competency.
 - 50 percent of professional development hours for all Bilingual Education and ESL teachers to be specific to the needs of ELLs, language acquisition and cultural competency.

School District Planning and Reporting Requirements

- School district plans must include the following information on programs for subpopulations of ELLs; records indicating parent’s preferred language or mode of communication; methods to annually measure and track ELL progress; and systems to identify, assess, and exit students from ELL status.
- School districts are required to provide additional information on programs for subpopulations of ELLs including program information, if offered, by subpopulation and languages spoken in the district. Subpopulations of English Language Learners include:
 - Students with Inconsistent/Interrupted Formal Education
 - English Language Learners with Disabilities
 - Newcomer English Language Learners
 - Developing English Language Learners
 - Long-Term English Language Learners
 - Former English Language Learners

Additional Future Amendments

It is anticipated that an additional set of amendments to Part 154 will be presented at the December meeting of the Board of Regents, following a 45-day public comment period beginning on October 8, 2014. The proposed amendments to Subpart 154-2 would:

- Allow parents ten school days, rather than the current five school days to sign and return a statement to the district that the parent is either in agreement with the child being placed in a Bilingual Education program or directs the district to place the child in an English as a New Language program; and
- Permit school districts, under certain circumstances (i.e., districts in which English Language Learners make up less than five percent of the district’s total student population) to be eligible to apply for a waiver of the requirement that a minimum of 15 percent of the required professional development clock hours for all teachers and a minimum of 50 percent of the required professional development clock hours for all Bilingual and English as a Second Language teachers be dedicated to certain areas related to the needs of English Language Learners.

Based on public comment and guidance issued by the United States Department of Education in July 2014, SED has determined that a new Subpart-154-3 of the Regulations is necessary to establish identification criteria for determining whether a student with a disability should take the statewide English language proficiency assessment and criteria for exiting students with disabilities from English Language Learner status. Notice of Revised Rule Making will be

published in the State Register on October 1, 2014. Subpart 154-3 will be brought to the Board for approval at its November meeting.

Advice to Local Leaders

- Work with the school district's administration to urge that appropriate teaching staff are involved in developing and implementing the district's comprehensive plan and that a timetable is established to review the plan annually for compliance.
- Work with the school district professional development committee to design differentiated professional development plan that supports the education of ELLs.

Resources on English Language Learners

- **NYSUT's ELT** offers graduate courses and seminars for educators on a number of topics related to ELLs including strategies to enrich content courses at the elementary, middle, and secondary levels. <http://www.nysut.org/resources/special-resources-sites/education-learning-trust> This coursework could be used to satisfy the new professional development requirements that must now be incorporated into school district professional development plans starting with the 2015-16 school year.
- **Colorín Colorado**, through a partnership between AFT and Reading Rockets, provides a free web-based, bilingual service that provides information, activities, and advice for educators and Spanish-speaking families of English language learners. <http://www.colorincolorado.org/>
- **The Regional Bilingual Education-Resource Networks (RBE-RN)** provide professional development and technical assistance to educators in New York State and are funded through grants from NYSED's Office of Bilingual Education-Foreign Language Studies. RBE-RNs provide regionally-based resources to districts/school to improve their instructional programs and practices for ELLs. More information about RBE-RNs and a current directory is on the NYSED website: <http://www.p12.nysed.gov/biling/bilinged/betac.html>
- **New York State Teachers of English to Speakers of Other Languages (NYS TESOL):** <http://www.nystesol.org/> NYS TESOL is an association of professionals concerned with the education of English language learners at all levels of public and private education in New York State. Our interests include classroom practices, research, program and curriculum development, employment, funding, and legislation.
- **New York State Association for Bilingual Education (NYSABE):** <http://nysabe.net/index/> NYSABE is a non-profit professional organization that seeks to ensure equitable educational opportunities for NYS's ELLs, through the implementation of Bilingual Education programs.

Definitions of Key Terms

Annual English language proficiency assessment means the process followed to annually assess the English language proficiency of an English Language Learner using such assessments as determined by the Commissioner. Such assessments shall be among the criteria used to determine if a student continues to be classified as an English Language Learner.

Bilingual Education program means a research-based program comprised of three components: (1) a language arts instruction component, including Home Language Arts and English Language Arts; (2) an English as a New Language component; and (3) a bilingual content area instructional component (including all bilingual content areas, i.e. math, science, and social studies, depending on the Bilingual Education program model and the student's level of English language development, but must at a minimum include at least two bilingual core content areas, i.e. math, science, and social studies).

Developing English Language Learners means students who have been identified as English Language Learners under this Part and have received English as a New Language (formerly English as a Second Language) instruction, as a component of their Bilingual Education or English as a New Language program, for a total of four (4) to six (6) continuously enrolled school years in the United States (the 50 States and the District of Columbia).

English Language Learners means students who, by reason of foreign birth or ancestry, speak or understand a language other than English and speak or understand little or no English, and require support in order to become proficient in English and are identified pursuant to section 154-2.3 of this Subpart; provided, however, that no student shall be served in a Bilingual Education or English as a New Language program pursuant to this Part for a period in excess of three school years from the date of initial enrollment or reentry in a New York State public school unless such period is extended by the commissioner with respect to an individual student in accordance with the provisions of subdivision 2 of section 3204 of Education law.

English Language Learner Subpopulations shall mean Newcomer, Developing, Long-Term and Former English Language Learners, English Language Learners with Disabilities and Students with Inconsistent/Interrupted Formal Education as defined in this section.

English as a New Language program shall mean a research-based program comprised of two components: a content area instructional component in English (including all core content, i.e. English language arts, math, science, or social studies) with home language supports and appropriate scaffolds, and an English language development component (Stand-alone and/or Integrated English as a New Language).

Former English Language Learners shall mean students who had been identified as English Language Learners and subsequently exited from English Language Learner status pursuant to section 154-2.3(m) of this Subpart.

Integrated English as a New Language shall mean a unit in of study or its equivalent in which students receive core content area (i.e., English language arts, math, science or social studies) and English language development instruction.

Long-term English Language Learners shall mean students who have been identified as English Language Learners under this Part and have received English as a New Language (formerly English as a Second Language) instruction, as a component of their Bilingual Education or English as a New Language program, for a total of seven (7) or more continuously enrolled school years in the United States (the 50 States and the District of Columbia).

Newcomer English Language Learners shall mean students who have been identified as English Language Learners under this Part and have received English as a New Language (formerly English as a Second Language) instruction, as a component of their Bilingual Education or English as a New Language program, for a total of zero (0) to three (3) continuously enrolled school years in the United States (the 50 States and the District of Columbia).

Qualified interpreter/translator shall mean a person who is fluent in the language in which he or she is communicating and in English, has a demonstrated ability to employ the mode of interpretation appropriate to the given situation (e.g.. simultaneous interpretation for hearings or large-group parent meetings), and has received training in specialized issues such as confidentiality and any applicable technical vocabulary. School staff who meet this criteria, such as a bilingual or English to Speakers of Other Languages teacher, certified pursuant to Part 80 of this Title, may be qualified to serve as an interpreter/translator.

Stand-alone English as a New Language shall mean a unit of study or its equivalent in which students receive instruction in order to acquire the English language needed for success in core content courses. A student shall not receive Stand-alone English as a New Language in lieu of core content area instruction.

Students with Inconsistent/Interrupted Formal Education shall mean English Language Learners who have attended schools in the United States (the 50 States and the District of Columbia) for less than twelve months and who, upon initial enrollment in such schools are two or more years below grade level in literacy in their home language and/or two or more years below grade level in Math due to inconsistent or interrupted schooling prior to arrival in the United States (the 50 States and the District of Columbia).

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