



New York State Regulations

NYS Regulations on Identification and Services to LEP Students ([CR Part 117](#) & [CR Part 154](#))

Regulations governing initial identification and services to limited English proficient (LEP) students in New York State.

[Amendments to Commissioner's Regulations Related to NCLB:](#)

[- Education of Students with Limited English Proficiency](#) pdf 81k

Part 154 Regulations, as amended by the Board of Regents on July 17, 2003 and effective May 2, 2003.



NYS Regulations for Teaching Certification for Bilingual Education ([CR Part 80.9](#)) and Teaching English to Speakers of Other Languages (TESOL) ([CR 80.10](#)).

To work as a bilingual education or English as a Second Language (ESL) teacher in New York State, an educator must fulfill particular requirements to become certified. Listed below are educational requirements to become a certified bilingual education or English as a Second Language (ESL) teacher in New York State.

Document **CR 80.9** provides certification requirements for bilingual education teachers, and document **CR 80.10** provides certification requirements for teachers of English to speakers of other languages (TESOL).

Additional certification information can be found at the NYSED Office of Teaching Initiatives website: <http://www.highered.nysed.gov/tcert/>

Information about Laws and Regulations

<http://usny.nysed.gov/lawsregs/>

PART 117

DIAGNOSTIC SCREENING OF PUPILS

Section 117.1 Scope of Part. The purpose of this Part is to establish standards for the screening of every new entrant to the schools to determine which pupils are possibly gifted, or have a possible handicapping condition in accordance with subdivision (6) of section 3208 of the Education Law and/or possibly are limited English proficient in accordance with subdivision 2-a of section 3204 of the Education Law.

117.2 Definitions. As used in this Part:

- a. A pupil who has a possible handicapping condition shall mean a pupil who, on the basis of diagnostic screening, shows evidence of being a pupil with a handicapping condition as defined in section 200.1(d) of this Title.
- b. A pupil who is possibly gifted shall mean a pupil who, on the basis of diagnostic screening, appears to meet the definition of gifted and talented as contained in section 142.2 of this Title.
- c. A pupil who possibly is limited English proficient shall mean a pupil who, on the basis of diagnostic screening, appears to meet the definition of limited English proficiency as contained in section 154.2 of this Title.
- d. New entrant shall mean a pupil entering the New York State public school system for the first time, or reentering a New York State public school with no available record of a prior screening.
- e. For purposes of paragraph (a) of subdivision (5) of section 3208 of the Education Law:

Pupils who score below level two on either the third grade reading or mathematics test for New York State elementary schools and pupils who obtain a comparable percentile score on the Regents Preliminary Competency Test in reading or writing shall mean pupils obtaining scores that have been designated by the commissioner as the scores indicating the need for diagnostic screening. Those pupils exempted from testing as non-English-speaking shall be examined in the pupil's native language through similar procedures, and shall be screened for possible handicapping conditions if resultant scores are comparable to those indicated above.

- a. Diagnostic screening shall mean a preliminary method of distinguishing from the general population those pupils who may possibly be gifted, those pupils who may possibly have a handicapping condition and/or those pupils who possibly are limited English proficient.

117.3 Diagnostic Screening.

- a. Each school district shall develop a plan for the diagnostic screening of all new entrants, pupils who score below level two on either the third grade reading or mathematics test for New York State elementary schools and students who obtain a comparable percentile score on the Regents Preliminary Competency

Test, and all such new entrants, pupils and students shall receive such screening.

b. Such diagnostic screening shall be conducted:

(1) by persons appropriately trained or qualified;

1. in the pupil's native language if the language of the home is other than English;
2. in the case of new entrants, prior to the school year, if possible, but no later than December first of the school year of entry, or within 15 days of transfer of a pupil into a New York State public school should the entry take place after December first of the school year;
3. in the case of pupils who score below level two on either the third grade reading or mathematics test for New York State elementary schools, and students who obtain a comparable percentile score on the Regents Preliminary Competency Test, within 30 days of the availability of the test scores.

c. Diagnostic screening shall include, but not be limited to:

1. a health examination by a duly licensed physician, or evidence of such in the form of a health certificate, in accordance with sections 903, 904 and 905 of the Education Law;
 2. certificates of immunization or referral for immunization in accordance with section 2164 of the Public Health Law;
 3. a determination of receptive and expressive language development, motor development, articulation skills and cognitive development;
 4. a determination that the pupil is of foreign birth or ancestry and comes from a home where a language other than English is spoken as determined by the results of a home language questionnaire and an informal interview in English.
- a. The results of the diagnostic screening shall be reviewed and a written report of each pupil screened shall be prepared by appropriately qualified school district staff. Such report shall include a description of diagnostic screening devices used, the pupil's performance on those devices and, if required, the appropriate referral.
 - b. A pupil who may have a handicapping condition shall be referred to the committee on special education no later than 15 calendar days after completion of such diagnostic screening. Such referral shall be accompanied by the report of such screening.
 - c. A pupil identified as possibly gifted shall be reported to the superintendent of schools no later than 15 calendar days after completion of such screening. Such referral shall be accompanied by the report of such screening.
 - d. A pupil being identified as limited English proficient shall be assessed in accordance with part 154 of this title.

PART 154**APPORTIONMENT AND SERVICES FOR PUPILS WITH LIMITED ENGLISH****PROFICIENCY**

Section 154.1 Scope of Part. The purpose of this Part is to establish standards for school districts having pupils with limited English proficiency to assure that such pupils are provided opportunities to achieve the same educational goals and standards as the general student population. In accordance with the provisions of this Part, each school district shall provide pupils with limited English proficiency equal access to all school programs and services offered by the district commensurate with their ages and grade level, including access to programs required for graduation.

154.2 Definitions.

(a) Pupils with limited English proficiency shall mean pupils who by reason of foreign birth or ancestry, speak a language other than English, and

(1) either understand and speak little or no English; or

(2) score at or below the 40th percentile, or its equivalent as determined by the commissioner, on an English language assessment instrument approved by the commissioner provided, however, that no pupil shall be served in a bilingual or English as a second language education program pursuant to this Part for a period in excess of three years from the date of enrollment in school unless such period is extended by the commissioner with respect to an individual pupil in accordance with the provisions of subdivision 2 of section 3204 of the Education Law.

(b) Initial identification is the process followed to determine if the pupil is limited English proficient, at the time of a pupil's enrollment in the New York State public school system for the first time or at the time of a pupil's reentry into the New York State public school system with no available record of prior screening, using appropriate and unbiased English language assessment instruments approved by the commissioner.

(c) Annual English language assessment is the process followed to determine if a pupil with limited English proficiency continues to be limited English proficient, using appropriate and unbiased English language assessment instruments approved by the commissioner.

(d) For grades seven through twelve in school years prior to the 1999-2000 school year, and for grades kindergarten through six in school years prior to the 2000-2001 school year, free-standing English as a second language program shall mean a program of instruction composed of an English as a second language component, and content area instruction in English supported by English as a second language methodologies. Such instruction

shall take into account the first language and culture of such pupils.

(1) The English as a second language component shall be designed to develop skills in understanding, speaking, reading, writing and communicating in English and shall be provided for a minimum of one unit of study or its equivalent.

(2) Content area instruction in English supported by English as a second language methodologies, employed in a systematic and structured way, shall be designed to develop cognitive skills of limited English proficient pupils.

(e) For grades seven through twelve in school years prior to the 1999-2000 school year, and for grades kindergarten through six in school years prior to the 2000-2001 school year, bilingual education program shall mean a transitional program of instruction which includes an English as a second language component, content area instruction in the native language and English and a native language arts component. Such instruction shall take into account the first language and culture of such pupils.

(1) The English as a second language component shall be designed to develop skills in understanding, speaking, reading, writing and communicating in English.

(2) Content area instruction shall provide instruction in the native language and English designed to teach subjects to limited English proficient pupils.

1. The native language arts component shall provide instruction in a language other than English, designed to develop communication skills, including those of listening, speaking, reading and writing, in a student's home language as well as an appreciation of the history and culture of the United States and the country of origin, through the study of literature. Such component shall be provided for a minimum of one unit of study or its equivalent.
- a. For grades seven through twelve in the 1999-2000 school year and thereafter, and for grades kindergarten through six in the 2000-2001 school year and thereafter, free-standing English as a second language program shall mean a program of instruction composed of two components: a language arts instructional component and a content area instructional component. Such instruction shall take into account the first language and culture of such pupils.
 1. the language arts instructional component shall include English language arts instruction and English as a second language instruction. The learning standards for English language arts, and key ideas and performance indicators for such standards, which are set forth in the publication, Learning Standards for English Language Arts, shall serve as the basis for the English as a second language curriculum (Learning Standards for English Language

Arts, Revised Edition, March 1996, New York State Education Department, Albany, New York 12234, available at the New York State Education Department, Office of Bilingual Education, Education Building Annex, Room 367, Albany, NY 12234).

- i. English language arts instruction shall be provided to students at the advanced and transitional levels of English language proficiency for a minimum of one unit of study or its equivalent, divided into substantially equal daily allotments of instructional time.
 - ii. English as a second language instruction shall be designed to develop skills in understanding, speaking, reading, writing and communicating in English through the integration of academic content appropriate for the pupil's age, grade level and English language skills, and shall be provided in substantially equal daily allotments of instructional time to:
 - a. pupils in grades kindergarten through eight at beginning and intermediate levels of English language proficiency for a minimum of two units of study or its equivalent;
 - b. pupils in grades kindergarten through eight at advanced and transitional levels of English language proficiency for a minimum of one unit of study or its equivalent;
 - c. pupils in grades nine through twelve at the beginning level of English language proficiency for a minimum of three units of study or its equivalent;
 - d. pupils in grades nine through twelve at intermediate levels of English language proficiency for a minimum of two units of study or its equivalent;
 - e. pupils in grades nine through twelve at advanced and transitional levels of English language proficiency for a minimum of one unit of study or its equivalent.
1. the content area instructional component shall provide grade and age level appropriate instruction in the required content area subjects in English supported by English as a second language methodologies, employed in a systematic and structured way, and shall be designed to develop cognitive skills of limited English proficient pupils.

(g) For grades seven through twelve in the 1999-2000 school year and thereafter, and for grades kindergarten through six in the 2000-2001 school year and thereafter, bilingual education program shall mean a program of instruction composed of two components: a language arts instructional component, and a content area instructional component. Such instruction shall take into account the first language and culture of such pupils.

1. The language arts instructional component shall include English language arts instruction, native language arts (NLA) instruction and English as a second language (ESL) instruction. The learning standards for English language arts, and key ideas and performance indicators for such standards, which are set forth in the publication, Learning Standards for English Language Arts, shall serve as the basis for the NLA and ESL curricula (Learning Standards for English Language Arts, Revised Edition, March 1996, New York State Education Department, Albany, New York 12234, available at the New York State Education Department, Office of Bilingual Education, Education Building Annex, Room 367, Albany, NY 12234).

- i. English language arts instruction shall be provided to students at the advanced and transitional levels of English language proficiency for a minimum of one unit of study or its equivalent, divided into substantially equal daily allotments of instructional time.
- ii. English as a second language (ESL) instruction shall be designed to develop skills in understanding, speaking, reading, writing and communicating in English through the integration of academic content appropriate for the pupil's age, grade level and English language skills. The time requirements for ESL instruction within a bilingual education program shall be the same as those established for the ESL instruction within a free-standing ESL program, as prescribed in subdivision (f) of this section.
- iii. Native language arts instruction shall be provided to students in a bilingual education program for at least one unit of study or its equivalent and shall be provided in substantially equal daily allotments of instructional time.

(2) The content area instructional component shall provide grade and age level appropriate instruction in the required content area subjects in the native language and English, in a systematic and structured way, and shall be designed to develop the cognitive skills of limited English proficient pupils.

(h) Exception. A school district, which is subject to a court order or is a party to a preexisting agreement with an appropriate Federal agency requiring programs substantially equivalent to or in excess of those required under these regulations, will not be required to comply with these regulations

and will be in compliance with this Part as long as the district fully implements the court order or agreement and fulfills all other requirements of this Part which are not addressed by such court order or agreement.

154.3 Board of education responsibility. Effective July 1, 1990 each board of education, including the board of each community school district of the city of New York, shall:

(a) adopt and implement a written policy concerning the education of pupils with limited English proficiency which shall include:

- (1) its philosophy for the education of such pupils;
- (2) administrative practices and procedures to:
 - (i) diagnostically screen pupils for limited English proficiency pursuant to Part 117 of this Chapter;
 - (ii) identify such pupils with limited English proficiency;
 - (iii) annually evaluate each such pupil including each such pupil's performance in content areas to measure the pupil's academic progress.
- (3) assurance of access to appropriate instructional and support services for such pupils, including guidance programs pursuant to section 100.20(j) of this Chapter;
- (4) assure that each such pupil has equal opportunities to participate in all school programs and extracurricular activities as non-limited English proficient pupils; and

(b) submit to the commissioner the following documents in the form and by the dates prescribed by the commissioner:

- (1) a copy of such written policy;
 - (2) a report by building of pupils initially identified and annually evaluated as being limited English proficient in the preceding school year;
 - (3) a report by building of the number of teachers and support personnel providing services to pupils with limited English proficiency; and
 - (4) a description by building of the curricular and extracurricular services provided to pupils with limited English proficiency.
- (c) distribute to the parents, or other persons in parental relation to pupils

with limited English proficiency, school related information in English or when necessary the language they understand.

(d) submit to the commissioner the results of the annual evaluation of limited English proficient pupils, including test data and any additional data required by the commissioner, in the format specified by the commissioner.

(e) refer limited English proficient pupils, who are suspected of having a handicapping condition, to the committee on special education in accordance with Part 200 of this Title and assure that a bilingual multidisciplinary assessment is conducted in accordance with section 200.4(b) of this Title before the committee identifies pupils with limited English proficiency as having a handicapping condition.

4. District comprehensive plan and program requirements for districts claiming State aid for the operation of programs for pupils with limited English proficiency. The provisions of this section shall apply to programs operated in the 1990-91 school year and thereafter and shall be the basis for aid payable in the 1991-92 school year and thereafter. In such districts, all limited English proficient students shall be entitled to receive services in accordance with subdivisions 2 and 2-a of section 3204 of the Education Law in a bilingual education or free-standing English as a second language program.

(a) In order to qualify for State aid for instruction provided to pupils with limited English proficiency in grades kindergarten through twelve, a school district shall develop a plan that describes how it will implement the additional requirements for its free-standing English as a second language program and bilingual education program, as prescribed in subdivisions (f) and (g) of section 154.2 of this Part. Such plan shall be submitted to the department by September 1, 1999, along with the district's Comprehensive Plan for the education of pupils with limited English proficiency required under Section 154.4 of this Part.

(b) In order to qualify for State aid for instruction provided to pupils with limited English proficiency, a school district, in addition to meeting the requirements of section 154.3 of this Part shall:

1. submit to the department a district comprehensive plan to meet the educational needs of pupils with limited English proficiency. Such plan shall be submitted no later than September first of each year, and, in addition to the reporting requirements of section 154.4(b) of this Part, shall include a report of the number of limited English proficient pupils served, and a proposed budget for the operation of a State aided program. The plan shall:

(i) set forth the information and assurances specified in section 154.4 of this Part;

- (ii) specify the criteria used by the district to place limited English proficient pupils in appropriate bilingual or free-standing English as a second language programs;
- i. provide a description of the nature and scope of the bilingual and/or English as a second language services currently available to limited English proficient pupils;
 - (iv) include an evaluation plan outlining the time schedule for data collection, approved assessment devices or techniques, and time schedule for the submission of data to the department in the format specified by the department;
 - (v) provide a description of the district and school level procedures for the management of the program, including: staffing, site selection, parental notification, coordination of funds, training and program planning; and
 - (vi) provide an assurance that the district shall comply with the requirements of this Part and of the provisions of the Education Law governing programs for pupils with limited English proficiency and State aid for such programs.
- (2) ensure that the provisions of section 3204 of the Education Law with respect to the instruction of limited English proficient pupils are adhered to.

(c) Types of programs.

- (1) Bilingual Education Program. Each school district which has an enrollment of 20 or more pupils with limited English proficiency of the same grade level assigned to a building, all of whom have the same native language which is other than English, shall provide such pupils with bilingual education programs.
- (2) Free-Standing English as a Second Language Program. Each school district which has pupils with limited English proficiency of the same grade level assigned to a building, but which does not have 20 of such pupils with the same native language which is other than English, shall provide either a free-standing English as a second language program, or a bilingual education program to such pupils.

(d) Support Services. Each school district with limited English proficient pupils participating in bilingual or free-standing English as a second language programs shall provide appropriate support services needed by such pupils to achieve and maintain a satisfactory level of academic performance. Such services may include, but need not be limited to, individual counseling, group counseling, home visits, and parental counseling. Where appropriate, such services shall be provided in the first language of the pupil and the pupil's parents or other persons in parental relation to the pupil.

(e) Transitional Services. Each school district shall ensure a transition for former limited English proficient pupils transferring from a bilingual or free-standing English as a second language program into an English mainstream program. Transitional services shall be provided for the first year after the pupil is placed in the English mainstream instructional program. Such pupils shall not be counted for purposes of limited English proficiency aid.

(f) In-service Training. Each school district with limited English proficient pupils shall provide in-service training to all personnel providing instruction or other services to such pupils in order to enhance their appreciation for the pupils' native languages and cultures and their ability to provide appropriate instructional and support services.

(g) Parental Notification. (1) The parents or other persons in a parental relation to a pupil designated as limited English proficient shall be notified, in English and the language they understand, of their child's placement in an instructional bilingual or free-standing English as a second language program and their options as set forth in paragraphs (2) and (3) of this subdivision. School districts offering programs to limited English proficient pupils shall make an effort to meet with the parents or other persons in parental relation to such pupils, at least twice a year, to help them understand the goals of the program and how they might help their children.

(2) The parents or other persons in parental relation to a pupil designated as limited English proficient shall have the option to withdraw their child from participation in an instructional bilingual education program, provided that:

(i) the parents or - other persons in parental relation to a pupil designated as limited English proficient meet with the school principal along with the school or district supervisor of bilingual education to discuss and explain further the nature, purposes, educational values of the program and the skills required of personnel;

(ii) as a minimum such pupil shall participate in a free-standing English as a second language program.

(3) In a school building where the number of eligible pupils does not require the offering of a bilingual education program, parents or other persons in parental relation to a pupil identified as limited English proficient shall have the option of transferring their child to a school within the district provided such program is available at such other school. A parent who chooses not to exercise the transfer option shall be informed that his or her child shall participate in a free-standing English as a second language program.

1. Parents or other persons in parental relation to a pupil designated as limited English proficient who is a new entrant, as defined in section 117.2 (d) of this Title, shall be provided an orientation session on the state standards, assessments, school expectations and general program requirements for the bilingual education program and the free-standing English as a second language program. Such orientation shall take place within the first semester of their child's enrollment in the school and, when needed, shall be provided in the first language of the pupil's parents or other persons in parental relation to the pupil.

(h) No later than September first of each year, each school district eligible for State aid for services provided to pupils with limited English proficiency in the preceding school year shall submit, in addition to the data required pursuant to section 154.3 of this Part, a fiscal report containing such information as the commissioner may prescribe, including but not limited to:

- (1) the number of pupils with limited English proficiency served;
 - (2) an accounting of the expenditure of limited English proficiency aid to supplement the basic program for such pupils; and
 - (3) an evaluation of the results obtained from the limited English proficiency aid provided to the district.
- (i) The commissioner shall provide an annual report to the Board of Regents.
- (j) A pupil whose score on an English language assessment instrument as specified in section 154.2(a) of this Part is a result of a handicapping condition shall be provided special education programs and services in accordance with the individualized education program (IEP) developed for such pupil pursuant to Part 200 of this Title, and shall also be eligible for services pursuant to this Part when such services are recommended in the IEP. A pupil with a handicapping condition receiving services in accordance with the provisions of this section shall be counted as a pupil served for the purposes of computing limited English proficiency aid as well as being counted for public excess cost aid for children with handicapping conditions.

- a. Variances. The commissioner may grant a variance to a school or school district from any of the requirements of subdivision (b) of this section upon a finding that:
 1. the granting of a variance is consistent with Education Law, section 3204; and
 2. the granting of a variance will enable the school or school district to implement a program designed to provide excellence in education that is substantially equivalent to a program which meets all requirements of such subdivision.

154.5 Extension.

- a. School districts operating programs under this Part for pupils with limited English proficiency in grades seven through twelve may apply for a one-year extension of time, for the 1999-2000 school year, to comply with the requirements established in subdivisions (f) and (g) of section 154.2 of this Part. A request for an extension shall be in writing and shall be filed with the commissioner no later than September 1, 1999.
- b. An extension shall be granted pursuant to this section upon a finding by the commissioner that:
 1. the school district will meet the requirements set forth in subdivisions (d) and (e) of section 154.2 of this Part for the 1999-2000 school year;
 2. the learning standards for English language arts, and key ideas and performance indicators for such standards, as set forth in sections 154.2(f)(1) and (g)(1), serve as the basis for its free-standing English as a second language program and its bilingual education program for the 1999-2000 school year; certified staff trained in bilingual education and English as a second language methodologies are employed;
 3. the school district has developed an adequate plan for the 2000-2001 school year to implement the additional requirements for its free-standing English as a second language and bilingual education programs, as prescribed in subdivisions (f) and (g) of section 154.2 of this Part;
 4. the school district has provided an adequate plan to provide in-service training during the 1999-2000 school year to all personnel providing instruction or other services to pupils with limited English proficiency, as required by subdivision (e) of section 154.4 of this Part; and
 5. good cause exists for such extension, which may include, but is not limited to, a finding that the school district has been unable to hire a sufficient number of qualified teachers to adequately implement the provisions of section 154.2(f) and (g) of this Part for the 1999-2000 school year or a finding that the school district lacks sufficient fiscal resources to adequately implement such provisions for such school year.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 215, 2117, 3204, 3602 and 3713

Part 154 of the Regulations of the Commissioner of Education is amended, effective May 2, 2003, as follows:

PART 154

APPORTIONMENT AND SERVICES FOR PUPILS WITH LIMITED ENGLISH

PROFICIENCY

154.1 Scope of Part.

The purpose of this Part is to establish standards for school districts having pupils with limited English proficiency to assure that such pupils are provided opportunities to achieve the same educational goals and standards as the general student population. In accordance with the provisions of this Part, each school district shall provide pupils with limited English proficiency equal access to all school programs and services offered by the district commensurate with their ages and grade level, including access to programs required for graduation.

154.2 Definitions.

(a) Pupils with limited English proficiency shall mean pupils who by reason of foreign birth or ancestry, speak a language other than English, and

(1) either understand and speak little or no English; or

(2) score below a state designated level of proficiency, on the Language Assessment Battery-Revised (LAB-R) or the New York State English as a Second Language Achievement

Part 154 Regulations, as amended by the Board of Regents on July 17, 2003 and effective May 2, 2003. The official copy of the approved Regulations will be disseminated as soon as it is published in the State Register.

Test (NYSESLAT); provided, however, that no pupil shall be served in a bilingual or English as a second language education program pursuant to this Part for a period in excess of three years from the date of enrollment in school unless such period is extended by the commissioner with respect to an individual pupil in accordance with the provisions of subdivision 2 of section 3204 of the Education Law.

(b) Initial identification is the process followed to determine if the pupil is limited English proficient, at the time of a pupil's enrollment in the New York State public school system for the first time or at the time of a pupil's reentry into the New York State public school system with no available record of prior screening, based upon such pupil scoring below a state designated level of proficiency on the LAB-R.

(c) Annual English language assessment is the process followed to determine if a pupil with limited English proficiency continues to be limited English proficient, based upon such pupil scoring below a state designated level of proficiency on the NYSESLAT.

(d) For grades kindergarten through twelve, free-standing English as a second language program shall mean a program of instruction composed of two components: a language arts instructional component and a content area instructional component. Such instruction shall take into account the first language and culture of such pupils.

(1) the language arts instructional component shall include English language arts instruction and English as a second language instruction. The learning standards for English language arts (ELA) and English as a second language (ESL), and key ideas and performance indicators for such standards, shall serve as the basis for the ELA and ESL curriculums, respectively.

(i) English language arts instruction shall be provided to students at the advanced level of English language proficiency for a minimum of one unit of study or its equivalent, divided into substantially equal daily allotments of instructional time.

(ii) English as a second language instruction shall be designed to develop skills in understanding, speaking, reading, writing and communicating in English through the integration of academic content appropriate for the pupil's age, grade level and English language skills, and shall be provided in substantially equal daily allotments of instructional time to:

(a) pupils in grades kindergarten through eight at beginning and intermediate levels of English language proficiency for a minimum of two units of study or its equivalent;

(b) pupils in grades kindergarten through eight at advanced levels of English language proficiency for a minimum of one unit of study or its equivalent;

(c) pupils in grades nine through twelve at the beginning level of English language proficiency for a minimum of three units of study or its equivalent;

(d) pupils in grades nine through twelve at intermediate levels of English language proficiency for a minimum of two units of study or its equivalent;

(e) pupils in grades nine through twelve at an advanced level of English language proficiency for a minimum of one unit of study or its equivalent.

(2) The content area instructional component shall provide grade and age level appropriate instruction in the required content area subjects in English supported by English as a second language methodologies, employed in a systematic and structured way, and shall be designed to develop cognitive skills of limited English proficient pupils.

(e) For grades kindergarten through twelve, bilingual education program shall mean a program of instruction composed of two components: a language arts instructional component,

and a content area instructional component. Such instruction shall take into account the first language and culture of such pupils.

(1) The language arts instructional component shall include English language arts (ELA) instruction, native language arts (NLA) instruction and English as a second language (ESL) instruction. The learning standards for shall serve as the basis for the NLA and ESL curricula.

(i) English language arts instruction shall be provided to students at the advanced level of English language proficiency for a minimum of one unit of study or its equivalent, divided into substantially equal daily allotments of instructional time.

(ii) English as a second language (ESL) instruction shall be designed to develop skills in understanding, speaking, reading, writing and communicating in English through the integration of academic content appropriate for the pupil's age, grade level and English language skills. The time requirements for ESL instruction within a bilingual education program shall be the same as those established for the ESL instruction within a free-standing ESL program, as prescribed in subdivision (d) of this section.

(iii) Native language arts instruction shall be provided to students in a bilingual education program for at least one unit of study or its equivalent and shall be provided in substantially equal daily allotments of instructional time.

(2) The content area instructional component shall provide grade and age level appropriate instruction in the required content area subjects in the native language and English, in a systematic and structured way, and shall be designed to develop the cognitive skills of limited English proficient pupils.

(f) Exception. A school district, which is subject to a court order or is a party to a preexisting agreement with an appropriate Federal agency requiring programs substantially

equivalent to or in excess of those required under these regulations, will not be required to comply with these regulations and will be in compliance with this Part as long as the district implements the court order or agreement and fulfills all other requirements of this Part which are not addressed by such court order or agreement.

154.3 Board of education responsibility.

Each board of education, including the board of each community school district of the city of New York, shall:

(a) adopt and implement a written policy concerning the education of pupils with limited English proficiency which shall include:

(1) its philosophy for the education of such pupils;

(2) administrative practices and procedures to:

(i) diagnostically screen pupils for limited English proficiency pursuant to Part 117 of this Title;

(ii) identify such pupils with limited English proficiency;

(iii) annually evaluate each such pupil including each such pupil's performance in content areas to measure the pupil's academic progress.

(3) an assurance of access to appropriate instructional and support services for such pupils, including guidance programs pursuant to section 100.2(j) of this Title;

(4) an assurance that each such pupil has equal opportunities to participate in all school programs and extracurricular activities as non-limited English proficient pupils; and

(5) a description of the nature and scope of the instructional programs and services currently available to limited English proficient pupils to help them acquire English proficiency;

and

(b) submit to the commissioner the following documents in the form and by the dates prescribed by the commissioner:

(1) a copy of such written policy;

(2) a report by building of the number of pupils initially identified as being limited English proficient and the number of limited English proficient pupils served in the preceding school year;

(3) a report by building of the number of pupils annually evaluated as being limited English proficient in the preceding school year;

(4) a report by building of the number and qualifications of teachers and support personnel providing services to pupils with limited English proficiency; and

(5) a description by building of the curricular and extracurricular services provided to pupils with limited English proficiency;

(c) distribute to the parents, or other persons in parental relation to pupils with limited English proficiency, school related information in English or when necessary the language they understand;

(d) submit to the commissioner the results of the annual evaluation of limited English proficient pupils, including test data and any additional data required by the commissioner, in the format specified by the commissioner; and

(e) refer limited English proficient pupils, who are suspected of having a disability, to the committee on special education in accordance with Part 200 of this Title and assure that a bilingual multidisciplinary assessment is conducted in accordance with section 200.4(b) of this Title before the committee identifies pupils with limited English proficiency as having a disability.

154.4 District comprehensive plan and program requirements for districts claiming State aid for the operation of programs for pupils with limited English proficiency.

The provisions of this section shall apply to programs operated in the 1990-91 school year and thereafter and shall be the basis for aid payable in the 1991-92 school year and thereafter. In such districts, all limited English proficient students shall be entitled to receive services in accordance with subdivisions 2 and 2-a of section 3204 of the Education Law in a bilingual education or free-standing English as a second language program.

(a) In order to qualify for State aid for instruction provided to pupils with limited English proficiency, a school district, in addition to meeting the requirements of section 154.3 of this Part shall:

(1) submit to the department a district comprehensive plan to meet the educational needs of pupils with limited English proficiency. Such plan shall be submitted no later than September first of each year, and, in addition to the reporting requirements of section 154.3(b) of this Part, shall include a report of the number of limited English proficient pupils served, and a proposed budget for the operation of a State aided program. The plan shall:

- (i) set forth the information and assurances specified in section 154.3 of this Part;
- (ii) specify the criteria used by the district to place limited English proficient pupils in appropriate bilingual or free-standing English as a second language programs;
- (iii) provide a description of the nature and scope of the bilingual and/or English as a second language services currently available to limited English proficient pupils;
- (iv) include an evaluation plan outlining the time schedule for data collection, approved assessment devices or techniques, and time schedule for the submission of data to the department in the format specified by the department;

(v) provide a description of the district and school level procedures for the management of the program, including: staffing, site selection, parental notification, coordination of funds, training and program planning; and

(vi) provide an assurance that the district shall comply with the requirements of this Part and of the provisions of the Education Law governing programs for pupils with limited English proficiency and State aid for such programs; and

(2) ensure that the provisions of section 3204 of the Education Law with respect to the instruction of limited English proficient pupils are adhered to.

(b) Types of programs. (1) Bilingual Education Program. Each school district which has an enrollment of 20 or more pupils with limited English proficiency of the same grade level assigned to a building, all of whom have the same native language which is other than English, shall provide such pupils with bilingual education programs.

(2) Free-standing English as a Second Language Program. Each school district which has pupils with limited English proficiency of the same grade level assigned to a building, but which does not have 20 of such pupils with the same native language which is other than English, shall provide either a free-standing English as a second language program, or a bilingual education program to such pupils.

(c) Support services. Each school district with limited English proficient pupils participating in bilingual or free-standing English as a second language programs shall provide appropriate support services needed by such pupils to achieve and maintain a satisfactory level of academic performance. Such services may include, but need not be limited to, individual counseling, group counseling, home visits, and parental counseling. Where appropriate, such

services shall be provided in the first language of the pupil and the pupil's parents or other persons in parental relation to the pupil.

(d) Transitional services. Each school district shall ensure a transition for former limited English proficient pupils transferring from a bilingual or free-standing English as a second language program into an English mainstream program. Transitional services shall be provided for the first year after the pupil is placed in the English mainstream instructional program. Such pupils shall not be counted for purposes of limited English proficiency aid.

(e) In-service training. Each school district with limited English proficient pupils shall provide in-service training to all personnel providing instruction or other services to such pupils in order to enhance their appreciation for the pupils' native languages and cultures and their ability to provide appropriate instructional and support services.

(f) Parental notification. (1) The parents or other persons in a parental relation to a pupil designated as limited English proficient shall be notified, in English and the language they understand, of their child's placement in an instructional bilingual or free-standing English as a second language program and their options as set forth in paragraphs (2) and (3) of this subdivision. School districts offering programs to limited English proficient pupils shall make an effort to meet with the parents or other persons in parental relation to such pupils, at least twice a year, to help them understand the goals of the program and how they might help their children.

(2) The parents or other persons in parental relation to a pupil designated as limited English proficient shall have the option to withdraw their child from participation in an instructional bilingual education program, provided that:

(i) the parents or other persons in parental relation to a pupil designated as limited English proficient meet with the school principal along with the school or district supervisor of bilingual education to discuss and explain further the nature, purposes, educational values of the program and the skills required of personnel;

(ii) as a minimum such pupil shall participate in a free-standing English as a second language program.

(3) In a school building where the number of eligible pupils does not require the offering of a bilingual education program, parents or other persons in parental relation to a pupil identified as limited English proficient shall have the option of transferring their child to a school within the district provided such program is available at such other school. A parent who chooses not to exercise the transfer option shall be informed that his or her child shall participate in a free-standing English as a second language program.

(4) Parents or other persons in parental relation to a pupil designated as limited English proficient who is a new entrant, as defined in section 117.2 (d) of this Title, shall be provided an orientation session on the state standards, assessments, school expectations and general program requirements for the bilingual education program and the free-standing English as a second language program. Such orientation shall take place within the first semester of their child's enrollment in the school and, when needed, shall be provided in the first language of the pupil's parents or other persons in parental relation to the pupil.

(g) No later than September 1st of each year, each school district eligible for State aid for services provided to pupils with limited English proficiency in the preceding school year shall submit, in addition to the data required pursuant to sections 154.3 and 154.4 of this Part, a fiscal

report containing such information as the commissioner may prescribe, including but not limited to:

(1) the number of pupils with limited English proficiency served;

(2) an accounting of the expenditure of limited English proficiency aid to supplement the basic program for such pupils; and

(3) an evaluation of the results obtained from the limited English proficiency aid provided to the district.

(h) The commissioner shall provide an annual report to the Board of Regents.

(i) A pupil whose score on the LAB-R or the NYSESLAT, as specified in section 154.2(a),(b) and (c) of this Part, is a result of a disability shall be provided special education programs and services in accordance with the individualized education program (IEP) developed for such pupil pursuant to Part 200 of this Title, and shall also be eligible for services pursuant to this Part when such services are recommended in the IEP. A pupil with a disability receiving services in accordance with the provisions of this section shall be counted as a pupil served for the purposes of computing limited English proficiency aid as well as being counted for public excess cost aid for children with disabilities.



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AMENDMENTS TO THE REGULATIONS OF THE COMMISSIONER OF
 EDUCATION

BILINGUAL EDUCATION

80-2.9 Certificates valid for bilingual education.

(a) Preparation. The validity of a provisional or permanent certificate issued pursuant to this Part may be extended by the commissioner to include bilingual education if the holder of such certificate meets the requirements described in paragraphs (1), (2), (3) or (4) of this subdivision, provided that the candidate applied for and upon application qualified for such extension prior to February 2, 2004, except for candidates who are applying for an extension to a certificate title in pupil personnel service or the administrative and supervisory service for which no time limit for application is applicable. Candidates who apply for an extension in bilingual education on or after February 2, 2004 for certificates in the classroom teaching service shall meet the requirements of Subpart 80-4 of this Part. Candidates who apply for an extension in bilingual education on or after February 2, 2004 for certificates in the pupil personnel service or the administrative and supervisory service shall be required to meet the requirements of this section.

(1) Completion of an approved program registered by the department specifically for service as a teacher of bilingual education.

(i) For teachers of the common branch subjects in the lower (PreK-3) and upper (4-6) elementary grades (PreK-6) (see section 80-2.12 of this Subpart) the program will include methods and materials of teaching English as a second language; cultural perspectives; theory and practice of bilingual/multicultural education; methods of teaching core subject areas in the native language; native language arts; evaluation in bilingual education; and linguistics. The program will provide a college-supervised field experience in bilingual education.

(ii) For teachers of occupational subjects (see section 80-2.5 of this Subpart), teachers of children with handicapping conditions (see section 80-2.6 of this Subpart), teachers of reading (see section 80-2.7 of this Subpart), teachers of English, languages other than English, mathematics, the sciences and social studies (see section 80-2.13 of this Subpart) and teachers of special subjects (see section 80-2.14 of this Subpart), the program will include methods and materials of teaching English as a second language; cultural perspectives; theory and practice of bilingual/multicultural education; methods of teaching

the subject area in the native language; and native language arts. The program will provide a college-supervised field experience in bilingual education.

(iii) For pupil personnel service professionals (see section 80-2.3 of this Subpart), administrative and supervisory personnel (see section 80-2.4 of this Subpart), and school media specialists (see section 80-2.8 of this Subpart), the program will include cultural perspectives, theory and practice of bilingual/multicultural education, and methods of providing services in the native language. The program will provide appropriate college-supervised field experience in the certificate area in a bilingual context.

(iv) Language proficiency. The candidate will submit evidence of having achieved a satisfactory level of oral and written proficiency in English and in the target language of instruction on the New York State Teacher Certification Examinations.

(2) Interstate agreement on qualifications of educational personnel. A provisional extension certificate may be issued to a candidate who has satisfied the conditions of the agreement by completing a program of preparation at an approved institution of higher education, or who has attained an initial regular certificate and required experience in a state which has contracted with the State of New York pursuant to Education Law, section 3030.

(3) Alternate completion of requirements. A provisional or permanent certificate may be extended to bilingual education for a candidate who has completed the following:

(i) For teachers of the common branch subjects in the lower (PreK-3) and upper (4-6) elementary grades (PreK-6) (see section 80-2.12 of this Subpart), 24 semester hours of collegiate study at an institution with an approved bilingual education program to include: methods and materials of teaching English as a second language; cultural perspectives; theory and practice of bilingual/multicultural education; methods of teaching core subject areas in the native language; native language arts; evaluation in bilingual education; and linguistics;

(ii) For teachers of occupational subjects (see section 80-2.5 of this Subpart), teachers of children with handicapping conditions (see section 80-2.6 of this Subpart), teachers of reading (see section 80-2.7 of this Subpart), teachers of English, languages other than English, mathematics, the sciences and social studies (see section 80-2.13 of this Subpart), and teachers of special subjects (see section 80-2.14 of this Subpart), 15 semester hours of collegiate study at an institution with an approved bilingual education program to include: methods and materials of teaching English as a second language; cultural perspectives; theory and practice of bilingual/multicultural education; methods of teaching the subject area in the native language; and native language arts; or

(iii) For pupil personnel service professionals (see section 80-2.3 of this Subpart), administrative and supervisory personnel (see section 80-2.4 of this Subpart), and school media specialists (see section 80-2.8 of this Subpart), 15 semester hours of collegiate study at an institution with an approved bilingual education program to include cultural perspectives, theory and practice of bilingual/multicultural education, and methods of providing services in the native language;

(iv) A college-supervised field experience in bilingual education or its equivalent. One year of paid full-time bilingual experience at the level or in the subject or field for which the

extension is being requested may be substituted for the field experience when such experience carries the recommendation of the chief school officer.

(v) Language proficiency. The candidate shall submit evidence of having achieved a satisfactory level of oral and written proficiency in English and in the target language of instruction on the New York State Teacher Certification Examinations.

(4) Statement of continued eligibility. (i) A person employed in a position in New York State as a bilingual pupil personnel service worker or as a bilingual school administrator or supervisor for three of the five years immediately preceding September 1, 1995, may be issued a statement of continued eligibility pursuant to which such person may continue to serve without a certificate described in this section, provided such person holds a permanent certificate which is valid for service under section 80-2.3 or 80-2.4 of this Subpart.

(ii) A statement of continued eligibility shall be limited to a specific bilingual pupil personnel service certificate or a specific bilingual administrative or supervisory certificate, but shall be valid for service in any school district.

(iii) Applications for the statement of continued eligibility must be filed in the Department by September 1, 1995.

Historical Note

Sec. filed June 15, 2000 eff. July 10, 2000.



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The University of the State of New York
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AMENDMENTS TO THE REGULATIONS OF THE COMMISSIONER OF
EDUCATION

Pursuant to Section 207 of Education Law

TESOL

80-2.10 Certificate valid for teaching English to speakers of other languages in the prekindergarten, elementary and secondary grades.

(a) Provisional certificate. (1) Preparation. To obtain a certificate to teach English to speakers of other languages in the prekindergarten, elementary and secondary grades (PreK-12), a candidate shall meet the requirements in one of the following subparagraphs:

(i) Completion of an approved program registered by the department specifically for service as a teacher of English to speakers of other languages in the prekindergarten, elementary and secondary grades (PreK-12). An approved program is one which prepares the teacher to create a productive learning environment for students whose native language is not English; to plan and execute instructional activities; to monitor and assess student learning; to address the special developmental and educational needs of prekindergarten, elementary and secondary school students; to collaborate effectively with co-workers; to communicate, plan, and work effectively with children's families; to use community resources, programs, and services appropriately; and to work effectively with students in a multicultural society, students with handicapping conditions, students of both sexes, and gifted and talented students. The program will assure that the candidate has completed a baccalaureate degree with a concentration in one of the liberal arts or sciences and college-level study in a language other than English; cultural perspectives; theory and practice of bilingual/multicultural education; theory of second language acquisition; language research; structure of the English language; and linguistics as the study relates to the teaching of English to speakers of other languages. The program will provide special training in the teaching of speaking, reading, writing and communication in English to speakers of other languages, and materials and techniques for teaching English to speakers of other languages through mathematics, science and social studies. The program will provide college-supervised student teaching in English to speakers of other languages in both the elementary and secondary grades.

(a) English language proficiency. The candidate shall submit evidence of having achieved a satisfactory level of performance in oral and written English on the New York State Teacher Certification Examinations.

(ii) Alternate completion of requirements. A provisional certificate may be issued to a candidate who has completed a program which shall include the following:

(a) a baccalaureate degree from a regionally accredited institution of higher education or from an institution authorized by the Board of Regents to confer degrees whose programs are registered by the department;

(b) successful completion of six semester hours of college-level credit in each of the following subjects: English, mathematics, science and social studies;

(c) a satisfactory concentration of 36 semester hours of college-level credit in one of the liberal arts and sciences unless the candidate holds a valid New York State teaching certificate issued prior to the effective date of this regulation;

(d) 15 semester hours of college-level credit in professional education, which enable the teacher to create a productive learning environment for students whose native language is not English; to plan and execute instructional activities; and to monitor and assess student learning in the prekindergarten, elementary and secondary grades. The study must prepare the teacher to collaborate effectively with co-workers; to communicate, plan, and work effectively with children's families; to use community resources, programs, and services appropriately; and to work effectively with students in a multicultural society, students with handicapping conditions, students of both sexes, and gifted and talented students, including a minimum of three semester hours in the teaching of speaking, reading, writing and communicating in English to speakers of other languages, and a minimum of three semester hours in materials and techniques for teaching English to speakers of other languages through mathematics, science and social studies;

(e) 15 semester hours of college-level credit in teaching English to speakers of other languages, including study in cultural perspectives; theory and practice of bilingual/multicultural education; theory of second language acquisition; language research; structure of the English language; and linguistics as the study relates to the teaching of English to speakers of other languages;

(f) one year of college level study or its equivalent of a language and culture other than English;

(g) a college-supervised student teaching experience in teaching English to speakers of other languages in both the elementary and secondary grades or its equivalent;

(h) English language proficiency. The candidate shall submit evidence of having achieved a satisfactory level of performance in oral and written English proficiency on the New

York State Teacher Certification Examinations; and

(i) one year of paid, full-time experience as a teacher of English to speakers of other languages or as a teacher of a language other than English may be substituted for college-supervised student teaching when such experience carries the recommendation of the chief school officer.

(2) Examinations for provisional certificate. Each candidate for a provisional certificate shall submit evidence of having achieved a satisfactory level of performance on the test of liberal arts and sciences and on the written assessment of teaching skills portion of the New York State Teacher Certification Examinations.

(3) Time validity. The provisional certificate shall be valid for five years from its effective date and is renewable subject to the approval of the commissioner for good cause shown, as defined in section 80-1.6 of this Part. An expired provisional certificate may be renewed once for a five-year term upon evidence that the holder is enrolled in a master's degree program leading to the permanent certificate. Notwithstanding the requirements of this paragraph, the commissioner shall not accept applications for the renewal of a provisional certificate submitted to the commissioner after February 1, 2004.

(b) Permanent certificate. (1) In addition to satisfying the requirements for the provisional certificate, the candidate shall have:

(i) satisfactorily completed a one academic year supervised internship or two years of teaching experience in a public or nonpublic school; and

(ii) earned a master's degree functionally related to the field of teaching service as defined by the commissioner.

(2) Examinations for permanent certificate. Each candidate for a permanent certificate shall submit evidence of having achieved a satisfactory level of performance on an examination in the area of the teaching certificate and on the assessment of teaching skills portion of the New York State Teacher Certification Examinations.

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