

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



Fact Sheet No: 14-20 (Updated)

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At its September 2014 meeting, the Board of Regents unanimously adopted amendments to Part 154 of the Commissioner's Regulations, effective October 1, 2014. At its November meeting, the Board adopted amendments to Part 154 of the Commissioner's Regulations regarding English as a New Language (ENL) students with disabilities. This fact sheet update provides a summary of the amendments.

For a copy of the complete Regulation, see

<http://www.emsc.nysed.gov/sss/lawsregs/117-1-3.html>

<http://www.regents.nysed.gov/meetings/2014/September2014/914p12a3.pdf>

<http://www.regents.nysed.gov/meetings/2014/November2014/1114p12a2.pdf>

Subparts 154-1 and 154-2 require school districts to assure students with limited English proficiency (hereinafter referred to as students of "English as a New Language," or ENL) are provided opportunities to achieve the same educational goals and standards established for all students. Subpart 154-1 describes school district responsibilities for ENL students prior to the 2015-2016 school year. Subparts 154-2 and 154-3 describe program and service requirements for ENL with which school districts must comply for the 2015-2016 school year and thereafter.

What's New in 2015-16

- ◆ School districts are not only expected to annually identify ENL students who are 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 students' identified needs.
- ◆ School districts are required to implement a bilingual class based on the number of ENL students who speak the same language in a particular *grade* in the district, not in a particular building.
- ◆ School districts must provide all teachers and administrators professional development to meet the needs of ENL students.

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- ◆ School districts may now use additional criteria to determine whether an ENL student is ready to exit ENL services, including a combination of a student’s NYSESLAT score and 3-8 ELA assessment score or ELA Regents scores.
- ◆ The Language Proficiency Team (LPT) will now be responsible for determining if students who have (or are suspected of having) a disability should be initially identified as an ENL student and receive bilingual or ENL programs and services. Furthermore, the LPT will determine on an individual student basis how best to evaluate an ENL student with special needs.

The Subpart 154-2 and 154-3 amendments take effect in the 2015-16 school year and 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
- Professional Development
- School District Planning and Reporting Requirements
- Assessment of ENL Students with Disabilities

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

Identification Process

- School districts are required to implement a four step ENL 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 the New York State Identification Test for English Language Learners (NYSITELL), the state’s initial evaluation for ENL students.
- Qualified staff is defined as a bilingual or ENL teacher, or a teacher trained in cultural competency, language development and the needs of ENL students.
- An additional step has been added to the identification process for an ENL student with a disability. Districts are now required to determine whether disability is the determinant factor affecting his or her ability to demonstrate proficiency in English.
- Districts are required to identify Students with Interrupted Formal Education (SIFE)¹.

¹ NYSED defines the SIFE population as those ENL students 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.

Parent Notification and Information

- School staff are required to meet with parents or guardians 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.
- School districts must 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.

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 ENL student's cumulative record.

Placement

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

Program Requirements and Provision of Programs

- School districts are required to offer English as a New Language instruction through two options, based on the student's level of English proficiency:
 - (1) Integrated ENL (ENL methodologies in content area instruction co-taught or taught by a dually certified teacher); and/or
 - (2) Stand-alone (ENL instruction with an ENL teacher to develop the English language needed for academic success).
- Bilingual Education Program Requirements:
 - School districts must make annual estimates of ENL enrollment before the end of each school year. In the event that the annual estimates identify 20 or more ENL students of the same grade level who speak the same home language district wide, districts must create a Bilingual Education program in the district to serve these students.
 - Each school building with 20 or more ENL 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 ENL population).
 - New bilingual programs (in districts with 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 Program Continuity

- School districts must provide program continuity so that ENL students continue to receive the program type (Bilingual Education or ENL) 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 ENL (both stand-alone and integrated ENL) 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 ENL:
 - (1) A score of Commanding (proficient) on the statewide English language proficiency assessment (NYSESLAT);
 - (2) A score of Expanding (Advanced) on the NYSESLAT, and 3+ on grade 3-8 ELA Assessment or 65+ on English Regents exam; or
 - (3) Determination that an ENL student with a disability cannot meet criteria (1) or (2) because of their disability, and are not in need of ENL services. For more information, please see below the section on Assessment of ENL Students with Disabilities.

Support Services

- School districts are required to annually identify ENL students who are 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 support to students after they exit ENL services upon demonstrating a command of English (proficiency). Support services may include bilingual instruction or Integrated ENL instruction.

Professional Development

- School districts must ensure that:
 - 15 percent of professional development hours for all teachers and administrators be specific to the needs of ENL students, language acquisition and cultural competency.
 - 50 percent of professional development hours for all Bilingual Education and ENL teachers to be specific to the needs of ENL students, language acquisition and cultural competency.
 - School districts under certain circumstances (i.e., districts in which ENL students make up less than five percent of the district's total student population) may 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 ENL teachers be dedicated to certain areas related to the needs of ENL students.

School District Planning and Reporting Requirements

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

Assessment of ENL Students with Disabilities

- Subpart-154-3 of the Regulations establishes identification criteria for determining whether a student with a disability should take the annual statewide New York State English Language Assessment Test (NYSESLAT) and criteria for exiting students with disabilities from ENL status.
- For an ENL who is also a Student with Disabilities, the Language Proficiency Team (LPT) will individually determine if the ENL student's special needs are the determinant factor affecting his or her ability to demonstrate Commanding (Proficient) on the NYSESLAT. This student can be evaluated by:
 - a) The NYSESLAT without testing accommodations
 - b) The NYSESLAT with testing accommodations, as noted on student's IEP or 504 plan, or
 - c) An alternate assessment approved by the Commissioner of Education

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 ENL students.

Resources on English as a New Language Students

- **NYSUT's ELT** offers graduate courses and seminars for educators on a number of topics related to ENL education 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. The graduate courses can also be used to satisfy coursework for certified grade-level or content-area teachers who seek the ESOL (English as a Second Language), a.k.a. ENL, extension on their teaching certificate.
- **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 ENL students. 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 as a New Language students 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 ENL students, 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 as a New Language student, using such assessments as determined by the Commissioner. New York's annual assessment is called the New York State English as a Second Language Assessment Test (NYSESLAT). Such assessments shall be among the criteria used to determine if a student continues to be classified as an ENL student.

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 as a New Language means students who have been identified as ENL students 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 as a New Language means students who, by reason of foreign birth or ancestry, speak or understand a language other than English and do not understand and/or communicate proficiently in English, require support in order to gain English proficiency, 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 as a New Language Subpopulations shall mean Newcomer, Developing, Long-Term and Former ENL students, ENL students 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, comprised of Stand-alone and/or Integrated English as a New Language/ELA or content-area instruction.

Former English as a New Language students shall mean students who had been identified as ENL students and subsequently exited from ENL 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 as a New Language instruction.

Long-term English as a New Language shall mean students who have been identified as ENL under this Part and have received English as a New Language instruction, as a component of their Bilingual Education or ENL 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 as a New Language students shall mean students who have been identified as ENL students under this Part and have received English as a New Language instruction, as a component of their Bilingual Education or ENL 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 bilingual or ENL teachers, certified pursuant to Part 80 of this Title, may be qualified to serve as an interpreter/translator.

Stand-alone English as a New Language (ENL) 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-ENL in lieu of core content area instruction.

Students with Inconsistent/Interrupted Formal Education shall mean English as a New Language students 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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