



To: P-12 Education Committee

From: Cosimo Tangorra, Jr. *Cosimo Tangorra Jr.*

Subject: Proposed Addition of Subparts 154-1 and 154-2 of the Commissioner's Regulations

Date: September 11, 2014

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SUMMARY

Issue for Decision

Should the Board of Regents amend Part 154 of the Commissioner's Regulations to add new Subparts 154-1 and 154-2, as part of the Department's effort to improve instruction and programming for English Language Learner (ELL) students to ensure stronger outcomes for this student population?

Reason(s) for Consideration

Implementation of Policy.

Proposed Handling

The proposed amendment is being presented to the P-12 Education Committee for recommendation and to the Full Board for adoption at the September Regents meeting.

Procedural History

At its December 2011 meeting, the Board of Regents directed Department staff to engage the field to determine how Commissioner's Regulations Part 154 should be revised or enhanced to better serve the needs of ELL students.

As a result, over the past three years, Department staff consulted with stakeholders statewide in various ways, including:

- Conducting Focus Groups (over 100 key stakeholders statewide)
- Surveying the Field (over 1600 respondents)
- Reviewing Draft Recommendations with key stakeholders
- Reviewing Draft Recommendations with the U.S. Department of Justice (USDOJ), U.S. Office of Civil Rights, and U.S. Department of Education (USDE) Title I and Title III Offices.

In April 2014, Department staff presented the Board of Regents with an update on the recommendations and stakeholder engagement process, and the Board directed staff to develop a proposal for amendments to Part 154 for the Board's discussion at the May 2014 meeting.

In May 2014 and June 2014, Department staff presented the Board of Regents with a proposal for amendments to Part 154 for discussion.

In June 2014, the Board of Regents directed staff to publish in the State Register on July 9, 2014 a Notice of Proposed Rule Making.

Following the publication of the proposed rulemaking a 45-day period for public comment occurred between July 9, 2014 and August 25, 2014.

A copy of the proposed amendment and an Assessment of Public Comment are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Over the past 10 years, New York State ELL student enrollment has increased by 20%. According to the U.S. Department of Education, ELL student enrollment has increased by 18% nationally. Currently in New York State, over 230,000 ELLs make up 8.9% of the total public student population. Students in New York State speak over 140 languages, with 61.5% of ELL students having Spanish as their home language. In addition, 41.2% of ELL students were born outside of the United States.

In the landmark 1974 decision, *Lau v. Nichols*, the United States Supreme Court established the right of ELL students to have "a meaningful opportunity to participate in the educational program." That same year, an agreement between the New York City Board of Education and ASPIRA of New York (called the ASPIRA Consent Decree) assured that ELL students would be provided Bilingual Education. As such, ELL students must be provided with equal access to all school programs and services offered to non-ELL students, including access to programs required for graduation. Education Law §3204 and Part 154 contain standards for educational services provided to ELL students in New York State. With this framework in place, the Department began to engage stakeholders to determine how the programs and services required in

Part 154 could be enhanced to better meet the needs of the State's multilingual population.

The Department's process began in early 2012 with focus group discussions representing over 100 key stakeholders from around the state. Those discussions informed the development of a statewide survey of policy options that was released in June 2012, and resulted in over 1,600 responses from teachers, principals, superintendents, advocates and others interested in the education of ELL students. The Department then used the survey results and focus group discussions to develop proposed policy changes and enhancements. Proposed changes were then shared with stakeholders for feedback and were also shared with the U.S. Department of Justice Office of Civil Rights, U.S. Department of Education staff responsible for Title I and Title III, and members of the Board of Regents for review and feedback.

Summary of Proposed Amendments

The specific areas of proposed regulatory amendments are as follows:

- Identification
- 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 Development¹
- District Planning and Reporting Requirements

Summary of Comments

The Department received over 100 comments during the public comment period.

The majority of the responses can be categorized as generally supportive of the amendments. Among respondents who were supportive, many urged the Department to make available additional guidance, supports, or resources to assist in implementation of the regulations. Some respondents recommended that certain provisions of the regulations should be expanded or intensified.

Among those who expressed concerns about the regulations, a number of respondents conflated the proposed regulations with the provisions of the current Part 154, and raised objections regarding these current provisions. A number of commenters

¹ Corresponding proposed regulatory amendments to Commissioner's Regulation Part 80 will be presented to the Board at a future meeting.

appear to have misunderstood certain provisions of the proposed regulations. For example, a number of responses, which appeared to be based on a form letter, raised concerns that students would be forced to leave their home schools to attend Bilingual Education programs. In fact, while the proposed regulations would require in many instances that districts create a bilingual program when there are 20 or more students in the district who attend the same grade and speak the same home language, no student would be forced to transfer to such a program, as parents have the option to have their child remain in his or her home school.

The most frequent concerns raised by commenters were:

- It will be challenging to find qualified personnel to implement the initial identification process as well as determine whether students should be classified as Students with Interrupted Formal Education (SIFE);
- The proposed regulations either inappropriately expand the requirements for provision of Bilingual Education programs, especially by requiring the creation of Bilingual Education programs based on the number of students in a grade districtwide who speak the same home language, or, alternatively, do not go far enough in making bilingual opportunities available by limiting the requirement for creation of “district” Bilingual Education programs to those languages spoken by at least 5% of ELLs statewide;
- The regulations will impose burdensome costs on districts, particularly small ones.

In the attached Assessment of Public Comment, the Department has provided responses to each of these concerns. In particular, the Department notes that there has been extensive research conducted over the last 10 years that indicates that the integration of language and content instruction leads to higher student outcomes. See e.g., Duffy, P. (2010). Language socialization into academic discourse communities; Coyle, D., Hood, P. & Marsh, D. (2010). CLIL: Content and language integrated learning. New York, NY: Cambridge University Press; Snow, C., Griffin, P., and Burns, S. (2007). Knowledge to support the teaching of reading: Preparing teachers for a changing world. Hoboken, NJ: John Wiley & Sons. Annual Review of Applied Linguistics, 30, 169-192.). Based on a review of this research the department is proposing the new instructional model of Integrated English as a New Language *in addition to* Stand-alone English as a New Language instruction.

In previous presentations to the Regents, Department staff have highlighted that the regulations contain provisions that will likely save many districts money in addition to those provisions that may increase costs for some districts. The Department also points out that some costs to which some commenters raised objections pertain to requirements of the current Part 154, not to the provisions of the proposed regulations.

Finally, since publication of the proposed rule in the State Register, nonsubstantial revisions were made as follows:

- In section 154-2.3(b)(5) and (6), the phrase “the student, if the student is 18 years of age or older” was added to clarify that such students be provided with notice of the superintendent’s acceptance of the principal’s recommendation to change a student’s designation and be provided with the notice of the reversal of a determination made by the principal in consultation with the Superintendent or the Superintendent’s designee.
- References in Subpart 154-2 to specific sections, subdivisions, paragraphs etc. of Subpart 154-3 have been replaced with general references to “Subpart 154-3 of this Part” because the Department is proposing revisions to Subpart 154-3 as a separate rule making and it is uncertain at this time what the specific section references will be.
- Minor grammatical revisions were made in 154-2.3(a)(5) involving the placement of commas and periods.

Based on the extensive three year engagement process with key stakeholders in the development of these proposed amendments and the public comments received, the Department recommends that the Board of Regents adopt the proposed regulations.

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That Part 154 of the Regulations of the Commissioner of Education be amended as submitted, effective October 1, 2014, to add new Subparts 154-1 and 154-2.

Timetable for Implementation

If adopted at the September Regents meeting, the proposed amendment will take effect on October 1, 2014.



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Tenure and Seniority Protections for Bilingual and English to Speakers of Other Languages Teachers and Teaching Assistants

The Issue: Due to the many fiscal challenges of the State, many districts have been forced over the course of the last couple of years to take steps to reduce their workforce. By statute, when a teacher's or teaching assistant's position is abolished, the teacher or teaching assistant having the least seniority in the system within the tenure area of the position abolished must be discontinued. An unintended consequence is that as districts hire new bilingual teachers and teaching assistants to serve expanding populations of English Language Learners (ELLs) and subsequent layoffs are made due to fiscal constraints, districts may be forced to lay off the more junior bilingual or English to Speakers of Other Languages (ESOL) teachers or teaching assistants that they need.

For example, if a district with dual language elementary school programs (with bilingual students) in which there are teachers who hold certification in the early childhood area and in bilingual education needs to lay off a teacher in the elementary tenure area for budgetary reasons, they must lay off the teacher with the least seniority. Even though the district is required by law to provide bilingual education to its ELLs, the result may be that the qualified bilingual teacher must be laid off while their position is filled by an elementary teacher who may well not be certified to teach bilingual education. If the teacher who fills the position is not certified to teach that position, the only recourse the district has is to bring a section 3020-a proceeding to terminate the teacher for not being qualified. If a single bilingual tenure area were established, which would require statutory change at the elementary level, abolition of a position in that tenure area could have a similar anomalous result. For example, if a bilingual tenure area is established, the least senior teacher may be the only teacher available in the district who is fluent in Chinese, and the teacher retained may be a bilingual teacher fluent in another language. If multiple language-specific tenure areas were established, which would also require statutory change at the elementary level, the result would be very narrow tenure areas with limited protection for teachers.

A similar situation may arise in the case of teaching assistants. There is a single tenure area for teaching assistants, so if the least senior teaching assistant is a teaching assistant fluent in Chinese or Urdu and is hired to assist a teacher in providing native language instruction to students who are speakers of those languages, that teaching assistant must be laid off. The result can be that the district is forced to assign a teaching assistant who does not speak those languages and is not able to provide the needed support in the students' native language. If a bilingual/ESOL teaching assistant tenure area were established, a similar result could obtain if a position is abolished in that tenure area.

The Solution:

SED supports enactment of legislation to require districts, in the event of an abolition of a position, to excess the teacher/teaching assistant with the least seniority in the tenure area of the position abolished, except where the retention of a less senior teacher/teaching assistant fluent in a specific language is necessary for the school district to provide required bilingual/ESOL instruction.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 208, 215, 305, 2117, 2854(1)(b) and 3204

Part 154 of the Regulations of the Commissioner of Education is amended, effective October 1, 2014, as follows:

Part 154

SERVICES FOR PUPILS WITH LIMITED ENGLISH PROFICIENCY

SUBPART 154-1

SERVICES FOR PUPILS WITH LIMITED ENGLISH PROFICIENCY FOR PROGRAMS OPERATED PRIOR TO THE 2015-2016 SCHOOL YEAR

[§154.1] §154-1.1 Scope and applicability of [Part] Subpart.

The purpose of this [Part] Subpart is to establish standards for school districts having [pupils] students with limited English proficiency (hereinafter “English Language Learners”) to assure that such [pupils] students are provided opportunities to achieve the same educational goals and standards [as the general student population] that have been established by the Board of Regents for all students. In accordance with the provisions of this [Part] Subpart, each school district shall provide [pupils with limited English proficiency] English Language Learners equal access to all school programs and services offered by the district, commensurate with [their ages] the student’s age and grade level, including access to programs required for graduation. The provisions of this Subpart shall apply to programs operated beginning with the 2007-2008 school

year and prior to the 2015-2016 school year, except as otherwise provided in this Subpart. Notwithstanding the provisions of this Subpart, a school district that operates such program may choose to implement one or more provisions of Subpart 154-2 in the 2014-2015 school year, provided that such district submits to the Commissioner for approval a plan in such format and pursuant to such timeline as the Commissioner may prescribe and that such plan indicates which provisions of each Subpart will be implemented in the 2014-2015 school year.

[§154.2] §154-1.2 Definitions. As used in this Subpart:

(a) Pupils with limited English proficiency (or “English Language Learners”) shall mean [pupils] students 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) prior to February 1, 2014, or on the New York State Identification Test for English Language Learners (NYSITELL) commencing February 1, 2014 and thereafter, or on the New York State English as a Second Language Achievement Test (NYSESLAT); provided, however, that no [pupil] student shall be served in a bilingual or English as a second language education program pursuant to this [Part] Subpart 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] student 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] student is limited English proficient, at the time of [a pupil's] the student's enrollment in the New York State public school system for the first time or at the time of [a pupil's] the student's reentry into the New York State public school system with no available record of prior screening, based upon such [pupil] student scoring below a State designated level of proficiency on the LAB-R prior to February 1, 2014, or on the NYSITELL commencing February 1, 2014 and thereafter.

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

(d) For grades kindergarten through 12, 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] students.

(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] students 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] students 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] students in grades nine through 12 at the beginning level of English language proficiency for a minimum of three units of study or its equivalent;

(d) [pupils] students in grades nine through 12 at intermediate levels of English language proficiency for a minimum of two units of study or its equivalent;

(e) [pupils] students in grades nine through 12 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] English Language Learners.

(e) For grades kindergarten through 12 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] students.

(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 ELA and ESL, and key ideas and performance indicators for such standards, 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] student'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] English Language Learners.

(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] Subpart as long as the district implements the court order or agreement and fulfills all other requirements of this [Part] Subpart which are not addressed by such court order or agreement.

[§154.3] §154-1.3 School district [responsibility] responsibilities.

[The provisions of this section shall apply to programs operated in the 2007-2008 school year and thereafter]. All [limited English proficient students] English Language Learners shall be entitled to receive services in accordance with subdivision 2 and [2(a)] 2-a of section 3204 of the Education Law.

(a) Each school district receiving total foundation aid, including each community school district of the City of New York, shall develop a comprehensive plan to meet the educational needs of [pupils with limited English proficiency] students who are English

Language Learners. Such plan shall be kept on file in the district and made available for department review upon request of the department. The plan shall include:

(1) the district's philosophy for the education of such [pupils] students;

(2) administrative practices and procedures to:

(i) diagnostically screen [pupils for limited English proficiency] students who are English Language Learners pursuant to Part 117 of this Title;

(ii) identify such [pupils with limited English proficiency] students who are English Language Learners;

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

(3) a description of the nature and scope of the bilingual and/or English as a second language instructional program and services available to [limited English proficient pupils] students who are English Language Learners;

(4) a description of the criteria used by the district to place [limited English proficient pupils] students who are English Language Learners in appropriate bilingual or free-standing English as a second language programs;

(5) a description by building of the curricular and extracurricular services provided to [pupils with limited English proficiency] students who are English Language Learners;

(6) 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.

(b) School related information shall be distributed to parents or other persons in parental relationship to [pupils with limited English proficiency in English] students who are English Language Learners or when necessary the language they understand.

(c) The school district shall submit to the commissioner the results of the annual evaluation of [limited English proficient pupils] students who are English Language Learners, including test data and any additional data required by the commissioner, in the format and timeframe specified by the commissioner.

(d) The school district shall ensure that the provisions of section 3204 of the Education Law with respect to the instruction of [limited English proficient pupils] students who are English Language Learners are adhered to.

(e) The school district shall refer [limited English proficient pupils] students who are English Language Learners and 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] students with English Language Learners as having a disability.

(f) The school district shall submit to the commissioner the following documents in a form and by a date specified by the commissioner:

(1) an assurance:

(i) of access to appropriate instructional and support services for such [pupils] students, including guidance programs pursuant to section 100.2(j) of this Title;

(ii) that each such [pupil] student has equal opportunities to participate in all school programs and extracurricular activities as [non-limited English proficient pupils] non-English Language Learners;

(iii) that the minimum ESL and ELA requirements prescribed in section [154.2(d)] 154-1.2(d) of this [Part] Subpart for the freestanding ESL programs are adhered to;

(iv) that the minimum ESL, ELA and NLA requirements prescribed in section [154.2(e)] 154-1.2(e) of this [Part] Subpart for bilingual education programs are adhered to;

(v) that teachers in the district's free-standing ESL and bilingual education programs are appropriately certified pursuant to Part 80 of this Title;

(vi) that the district will comply with the requirements of this [Part] Subpart and the provisions of the Education Law governing programs for [pupils with limited English proficiency] English Language Learners;

(vii) that programs for [limited English proficient pupils] English Language Learners will be administered in accordance with applicable Federal and State law and regulations and the district's comprehensive plan;

(2) a report by building of the number of [pupils] students identified as [being limited English proficient] English Language Learners in the preceding year, including their grade level, native language and instructional program;

(3) a report by building of the number of [limited English proficient pupils] students who are English Language Learners served in the preceding year, including their grade level, native language and instructional program;

(4) a report by building of the number of [pupils] students that took the NYSESLAT in the preceding school year;

(5) a report by building of the number and qualifications of teachers and support personnel providing services to [pupils with limited English proficiency] English Language Learners;

(6) a fiscal report containing such data concerning the preceding school year as may be required by the commissioner; and

(7) beginning in July 2008 and annually thereafter until the 2015-2016 school year, a report on the expenditure of State, local and Federal funds in the prior year on programs, activities and services for pupils with limited English proficiency.

(g) Types of programs.

(1) Bilingual Education Program. Each school district which has an enrollment of 20 or more [pupils with limited English proficiency] students who are English Language Learners 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] students with bilingual education programs.

(2) Free-standing English as a Second Language Program. Each school district which has [pupils with limited English proficiency] students who are English Language Learners of the same grade level assigned to a building, but which does not have 20 of such [pupils] students 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] students.

(h) Support services. Each school district with [limited English proficient pupils] students who are English Language Learners participating in bilingual or free-standing English as a second language programs shall provide appropriate support services needed by such [pupils] students 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] student and the [pupil's] student's parents or other persons in parental relation to the [pupil] student.

(i) Transitional services. Each school district shall ensure a transition for former [limited English proficient pupils] English Language Learner students 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] student is placed in the English mainstream instructional program.

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

(k) Parental notification.

(1) The parents or other persons in a parental relation to a [pupil designated as limited English proficient] student identified as an English Language Learner 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] students who are English Language Learners shall make an effort to meet with the parents or other persons in parental relation to such [pupils] students, 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] student designated as limited English proficient shall have the option to withdraw their child only 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] student identified as an English Language Learner 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] student shall participate in a free-standing English as a second language program.

(3) In a school building where the number of eligible [pupils] students 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] student identified as an English Language Learner 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] student identified as an English Language Learner 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] student.

(l) A [pupil] student whose score on the LAB-R prior to February 1, 2014, or on the NYSITELL commencing February 1, 2014 and thereafter, or on the NYSESLAT, as specified in section [154.2(a), (b) and (c)] 154-1.2(a), (b) and (c) of this [Part] Subpart, 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] student pursuant to Part 200 of this Title, and shall also be eligible for services pursuant to this [Part] Subpart when such services are recommended in the IEP. A [pupil] student with a disability receiving services in accordance with the provisions of this section shall be counted as [a pupil with limited English proficiency] an English Language Learner, as well as a student with a disability, for purposes of calculating State aid pursuant to section 3602 of the Education Law.

SUBPART 154-2

SERVICES FOR ENGLISH LANGUAGE LEARNERS FOR PROGRAMS OPERATED IN THE 2015-2016 SCHOOL YEAR AND THEREAFTER

154-2.1 Scope of Subpart and applicability.

(a) The purpose of this Subpart is to establish standards for school districts having students with limited English proficiency (hereinafter, "English Language Learners") to assure that such students are provided opportunities to achieve the same educational goals and standards that have been established by the Board of Regents for all students. In accordance with the provisions of this Part, each school district shall provide English Language Learners equal access to all school programs and services offered by the school district, commensurate with the student's age and grade level, including access to programs required for graduation. In addition, in accordance with this Part, each school district shall provide English Language Learners with Bilingual Education or English as a New Language (formerly, English as a Second Language) programs. The provisions of this Subpart shall apply to programs operated beginning with the 2015-2016 school year, except as otherwise provided in this Part.

(b) In order to meet the civil rights requirements applicable to public schools, charter schools shall either implement the provisions of this Part or an alternative language instruction educational program based on scientifically based research and approved by their charter entity.

154-2.2 Definitions. As used in this Subpart and Subpart 154-3:

(a) Annual English language proficiency assessment shall mean 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.

(b) Bilingual Education program shall mean 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).

(c) Continuously enrolled shall mean a student is enrolled from BEDS day to the last day of the annual English language proficiency assessment.

(d) Days shall mean calendar days unless otherwise indicated as school day or business day. School day means any day, including a partial day, that students are in attendance at school for instructional purposes. Business days means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day).

(e) Developing 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 four (4) to six (6) continuously enrolled school years in the United States (the 50 States and the District of Columbia).

(f) English Language Learners shall mean 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.

(g) 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.

(h) 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).

(i) 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.

(j) Home Language Arts shall mean a unit of study or its equivalent in Language Arts in the student's home language. Such unit of study shall be aligned to the New York State learning standards for English Language Arts and Literacy and the English Language Arts curriculum of the school district and shall focus on literacy and language development in the home language.

(k) Home Language Questionnaire shall mean a survey, as prescribed by the Commissioner, administered by qualified personnel to determine if a language other than English is spoken at home.

(l) Initial identification shall mean the process followed pursuant to section 154-2.3 to determine if a student is an English Language Learner upon the student's enrollment for the first time in the New York State public school system.

(m) 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.

(n) 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).

(o) 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).

(p) Personnel qualified to teach Home Language Arts at the elementary (K-6) level shall mean a teacher, certified pursuant to Part 80 of this Title, who holds a teaching certificate with a bilingual education extension in the home language (other than English). Personnel qualified to teach Home Language Arts in grades 7-12 shall mean a teacher, certified pursuant to Part 80 of this Title, who holds a teaching certificate in Languages Other than English.

(q) Personnel qualified to teach Integrated English as a New Language shall mean a dually certified teacher, certified pursuant to Part 80 of this Title, (i.e., English to Speakers of Other Languages certification and content area certification) or a certified English to Speakers of Other Languages teacher and a certified content area teacher, certified pursuant to Part 80 of this Title, who co-teach a class. In a K-6 bilingual program, as defined in section 154-2.3(h)(3) of this Subpart, personnel qualified to teach Integrated English as a New Language means a common branch K-6 teacher with a bilingual extension, certified pursuant to Part 80 of this Title.

(r) Personnel qualified to teach Stand-alone English as a New Language at the elementary level shall mean a English as a Second Language teacher, certified pursuant to Part 80 of this Title, or, in a K-6 bilingual program, as defined in section 154-

2.3(h)(3) of this Subpart, a certified common branch K-6 teacher with a bilingual extension, certified pursuant to Part 80 of this Title. Personnel qualified to teach Stand-alone English as a New Language in grades 7-12 shall mean a certified teacher of English to Speakers of Other Languages, certified pursuant to Part 80 of this Title.

(s) Proficient student shall mean a student who meets the criteria in section 154-2.3(m) of this Subpart for exiting English Language Learner status.

(t) 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.

(u) Qualified personnel as referred to in section 154-2.3(a) and (b) shall mean:

(1) a bilingual or English to Speakers of Other Languages teacher, certified pursuant to Part 80 of this Title, who is fluent in the home language of the student and parent or person in parental relation, or uses a qualified interpreter/translator of the language or mode of communication the student or parent or person in parental relation best understands, or

(2) a teacher who is certified pursuant to Part 80 of this Title, and has been trained in cultural competency, language development and the needs of English Language Learners, and who is proficient in the home language of the student or parent

or person in parental relation or uses a qualified interpreter/translator of the language or mode of communication the student or parent or person in parental relation best understands.

(v) Reentry identification shall mean the process followed pursuant to section154-2.3 to determine if a student is an English Language Learner who is reenrolling in a New York State public school after not having been enrolled in a New York State public school at any time during the preceding immediate two continuously enrolled school years.

(w) School district shall mean a common, union free, central, central high school, city school district or a charter school implementing the provisions of this Part, provided that, in the case of the city school district of the City of New York, such term shall mean a community school district or New York City superintendency.

(x) 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.

(y) 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).

(z) Superintendent shall mean the superintendent of a school district, or, in the city school district of the City of New York, the chancellor or his/her designee, or, in the case of a charter school implementing the provisions of this Subpart, such person as designated by the charter school board of trustees, other than the charter school principal.

154-2.3 School District Responsibilities.

The provisions of this section shall apply to programs operated in the 2015-16 school year and thereafter. All students who are English Language Learners who are enrolled in districts receiving foundation aid shall be entitled to receive services in accordance with subdivision 2 and 2-a of section 3204 of the Education Law.

(a) *Initial and Reentry Process and Determination of English Proficiency.* Each school district shall implement the following identification process and steps to determine if a student is an English Language Learner upon a student's initial enrollment or reentry in a New York State public school. If, after the completion of any step, it is determined that a student is not an English Language Learner, the remaining steps of the initial enrollment and/or reentry process shall not be completed.

(1) Step 1: Administration of the Home Language Questionnaire by qualified personnel as defined in section 154-2.2(u) to parents or persons in parental relation to determine if a language other than English is spoken at home;

(2) Step 2: An individual interview with the student by qualified personnel in English and the student's home language, and a review of the student's abilities or work samples in reading and writing in English and the home language and math that are

collected or generated during the interview, and for students reentering the New York State public school system, a review of prior experience in home language and/or English instruction, to determine if the student shall be administered the statewide English language proficiency identification assessment and to determine the student's grade level of literacy in their home language and grade level in math;

(3) Step 3: Students who have a disability: Follow a process, as specified in Subpart 154-3 of this Part, to determine whether the student shall take the statewide English language proficiency identification assessment and whether the student should be identified as an English Language Learner.

(4) Step 4: Administration of a statewide English language proficiency identification assessment as prescribed by the Commissioner, except for such students defined in paragraph (3) of this subdivision for whom it has determined that such assessment is not appropriate.

(5) If the student receives a score below a state designated level of proficiency established by the Commissioner on the statewide English language proficiency identification assessment, or in the case of a student with a disability the process defined in Subpart 154-3 of this Part has led to a determination that the student shall be identified as an English Language Learner, within five (5) school days of such identification, the school district must provide the student, if the student is 18 years of age or older, or the student's parent or person in parental relation written notice of such identification determination the right to seek review of such identification determination pursuant to section 154-2.3(b).

(6) If the student is identified as an English Language Learner, and Step 2 in section 154-2.3(a)(2) indicates that the student has attended schools in the United States (the 50 States and the District of Columbia) for less than twelve months and is two or more years below grade level in literacy in their home language and/or math due to inconsistent or interrupted schooling prior to arrival in the United States (the 50 States and the District of Columbia), the student shall also be identified as a Student with Inconsistent/Interrupted Formal Education.

(7) The identification process shall commence no later than the date of the student's initial enrollment or reentry in a New York State school district, except that the statewide English language proficiency identification assessment may not be administered before July 15 for students in grades 1-12 enrolling for the start of classes in September. For students enrolling in kindergarten for the start of classes in September, the statewide English language proficiency identification assessment may not be administered before June 1.

(8) Districts must complete all steps of the identification process in this section prior to the student's final placement in a school. A student shall be provisionally placed in a school until the identification process is completed.

(9) If a student is identified as an English Language Learner with a disability pursuant to paragraph (3) of this subdivision, each school district shall ensure that:

(i) Consistent with the requirements in section 200.3 of this Title, that the Committee on Special Education for such students include at least one individual, certified pursuant to Part 80 of this Title, to provide bilingual services or instruction or

teach English to Speakers of Other Languages, who is knowledgeable about the student's English and home language development needs;

(ii) Placement in a Bilingual Education or English as a New Language program pursuant to this Part is not refused solely because the student has a disability; and

(iii) assessment procedures that differentiate between language proficiency and disability are implemented in accordance with sections 200.4(b) and (c) of this Title.

(b) Review of Identification Determination.

(1) A school district shall initiate a review of a determination made in the initial or reentry identification process upon receipt within the first forty-five (45) school days of a student's initial or reentry determination of a written request in such form as may be prescribed by the Commissioner from any of the following:

(i) a student's parent or person in parental relation;

(ii) a student's teacher, if such teacher's request includes written consent from the parent or person in parental relation; or

(iii) a student, if the student is 18 years of age or older.

(2) Upon receipt of a written request, the school principal and qualified personnel, as defined by section 154-2.2(u) of this Subpart, shall:

(i) Review all documents related to the initial or reentry identification process prescribed in paragraph (a) of this subdivision;

(ii) Review the student's work in English and in the home language;

(iii) Consult with the parent or person in parental relation;

(iv) Conduct and review the results of a school-based assessment, administered by qualified personnel as defined by section 154-2.2(u) of this Subpart, of the student's abilities in listening, speaking, reading and writing in English;

(v) If personnel defined by section 154-2.2(p) of this Subpart are available in the district, conduct and review the results of a school-based assessment, administered by qualified personnel as defined by section 154-2.2(u) of this Subpart, of a student's abilities in listening, speaking, reading and writing in their home language; and

(vi) Consult with the Committee on Special Education (CSE) if the student is a student with a disability or is suspected of having a disability that may impact the ability to speak, read, write or listen in English.

(3) The review shall be completed and a determination made within ten (10) school days of the district's receipt of a written request, unless consultation with the CSE is required, in which case a determination shall be made within twenty (20) school days of the district's or the charter school's receipt of a written request.

(4) If, upon review, the school principal determines, based on the recommendation of qualified personnel, that the student designation should change, the principal shall inform the parent or person in parental relation of this recommendation, in the language or mode of communication the parent or other person in parental relation best understands. Upon receipt from the parent or person in parental relation of a signed acknowledgment letter in the language the parent or person in parental relation best understands, the principal shall submit for review and approval a recommendation to change the student's designation to the Superintendent or his or her designee. A

recommendation to change the student's designation shall not be made by the principal if the parent or person in parental relation, or student if the student is 18 years of age or older, does not submit a signed letter of consent in the language the parent or person in parental relation, or student if the student is 18 years of age or older, best understands.

(5) If the school principal recommends that the student designation should change and the parent or person in parental relation consents, the Superintendent, or his or her designee, shall review the school principal's recommendation and make a final determination to accept or reject the principal's recommendation within ten (10) days of receiving the school principal's recommendation. If the Superintendent, or his or her designee, accepts the principal's recommendation the district must inform the Commissioner and the school principal in writing, and the student, if the student is 18 years of age or older, or the parent or person in parental relation in the language or mode of communication the parent or person in parental relation best understands.

(6) If the Superintendent, or his or her designee, accepts a recommendation determining whether or not an English Language Learner's designation should change, the school principal, no less than six months and no later than one school year following that determination shall review the decision to ensure that the student's academic progress has not been adversely affected by the determination. If the principal, based on the recommendation of qualified personnel and the written consent of the parent or person in parental relation, believes that the student may have been adversely affected by the determination, the school principal shall provide additional support services to the student as defined in section 154-2.3(j) of this Subpart and may reverse the determination no less than six months and no later than one year from such

determination. A reversal of a determination must be made in consultation with the Superintendent or his or her designee. If a reversal of a determination is made, the Superintendent, or his or her designee, must inform the Commissioner and the school principal in writing, and the student, if the student is 18 years of age or older, or the parent or person in parental relation in the language or mode of communication the parent or person in parental relation best understands.

(7) If a determination is made pursuant to paragraphs (1) through (5) of this subdivision that a student is not an English Language Learner, the designation of such shall be changed in the student's cumulative record and the student shall not be reported as an English Language Learner. If a subsequent decision is made pursuant to paragraph (6) of this subdivision to reverse a determination that a student is not an English Language Learner, the student shall be re-designated as an English Language Learner in the student's cumulative record and the student shall be reported as an English Language Learner.

(c) Retention of Identification and Review Records.

(1) Each school district shall maintain in the student's cumulative record information regarding the parent's or person in parental relation's preferred language or mode of communication, as indicated on the Home Language Questionnaire.

(2) Each school district shall maintain all documents related to the initial identification and any subsequent review process, including the Home Language Questionnaire, English language proficiency identification assessment results, and any other records generated as part of the identification process and review process as

defined in paragraphs (a) and (b) of this section. Such information shall be maintained as part of the student's cumulative record.

(d) *Program Requirements.* Each school district shall provide either a Bilingual Education or English as a New Language program to students identified as English Language Learners. Each school district shall implement Bilingual Education and/or English as a New Language programs with fidelity to the requirements of this Part and in accordance with guidance prescribed by the Commissioner.

(1) *Annual Estimate of Enrollment of English Language Learners by School and Grade.* Each school district shall, by such date before the end of the current school year as determined by the Commissioner, and in such format as determined by the Commissioner, annually prepare and submit to the Commissioner and make widely available through public means, which may include, but not be limited to posting on the Internet, distribution through the media, and distribution through public agencies, an estimate of the number of English Language Learners who are expected to be enrolled in each school and in each grade within each school, as well as the number of English Language Learners in the district who speak the same home language, in the following school year. Such annual estimate shall be based on the previous three years of enrollment data for English Language Learners by school, grade and home language.

(2) Each school district in which the sum of each school's Annual Estimate of Enrollment of English Language Learners equals 20 or more English Language Learners of the same grade level, all of whom have the same home language that is other than English, shall provide a sufficient number of Bilingual Education programs in the district in the following school year, such that there are Bilingual Education

programs available in the district for at least seventy percent (70%) of the estimated English Language Learners students who share the same home language other than English and grade level districtwide.

(3) Each school district shall place any new Bilingual Education programs required by section 154-2.3(d)(2) of this Subpart in a school that has not been identified as a School Under Registration Review or as a Focus or Priority School pursuant to Part 100 of this Title, if such school exists in the district. If a school that has not been so identified does not exist or does not have the physical space for the new Bilingual Education program, the district must submit a justification, in a form and according to such timeline as prescribed by the Commissioner, and receive approval from the Commissioner to place the new Bilingual Education program(s) in a Focus School or in a Priority School if no Focus School exists in the district. In the case of New York City, in the event that a Priority School is the only option for placement of a new Bilingual Education program, the district shall open the program but give parents or persons in parental relation the option to transfer their child to a Bilingual Education program in a school that has not been identified as a School Under Registration Review or as a Focus or Priority School pursuant to Part 100 of this Title in a neighboring community school district. In all such cases where the opportunity to transfer to another school is offered, the student shall be provided transportation in accordance with Education Law section 3635 and/or district policy as applicable.

(4) Each school district that has an Annual Estimate of Enrollment of English Language Learners in which 20 or more English Language Learners of the same grade level assigned to a school, all of whom have the same home language that is other than

English, shall provide such students with a Bilingual Education program at that school in the following school year.

(5) Each English Language Learner shall be provided the opportunity to transfer to another school in the district that operates a Bilingual Education program that serves the same grade level and language, if such Bilingual Education program does not exist in the school in which the student is enrolled. In all such cases where the opportunity to transfer to another school is offered, the student shall be provided transportation in accordance with Education Law section 3635 and/or district policy as applicable.

(6) A district may seek permission on an annual basis from the Commissioner for a one-year exemption from providing Bilingual Education programs required by section 154-2.3(d)(2) in languages that are the home language of less than five percent (5%) of the statewide English Language Learner population. A district may seek permission for such exemption for no more than five (5) consecutive school years, if the district demonstrates that:

(i) the district does not have qualified staff to operate a Bilingual Education program in that language for all eligible students at either the district level or at one or more schools that are required to offer a bilingual program; or

(ii) the district overestimated the number of English Language Learners in that language who would be enrolled in the district or a school who are in the same grade and speak the same home language such that the actual number of such students is fewer than 20.

(7) In order to qualify for a one-year exemption from providing such Bilingual Education program in languages that are spoken by less than five percent (5%) of the

statewide English Language Learner population, a district must submit, in such format and according to such timeline, as may be prescribed by the Commissioner, for approval:

(i) Evidence demonstrating the efforts that the district made to recruit qualified bilingual teachers in the languages that are spoken by less than five percent (5%) of the total statewide English Language Learner population and the plans that the district and the school, as applicable, has for ongoing and intensive efforts to recruit qualified bilingual teachers in that language, or evidence of the number of English Language Learners enrolled in a school by grade and home language and the district class size averages compared to the class size averages that would be required to operate a Bilingual Education program for which an exemption is sought;

(ii) A plan for how the district will provide alternate home language supports in the form of bilingual teacher assistants/aides and/or heritage language programs, as defined by the Commissioner, and make such home language supports available for all students who would otherwise be enrolled in a Bilingual Education program.

(8) Upon a finding that the district has made adequate efforts to recruit bilingual teachers, has developed a plan to intensify its recruitment efforts, and will implement satisfactory alternate home language supports for students for whom the district would otherwise be required to provide a Bilingual Education program, the Commissioner may grant a one-year exemption to the school district from the requirement to provide a Bilingual Education program.

(9) An English as a New Language program must be provided to all English Language Learners who are not served by a Bilingual Education program.

(10) In instances where the Commissioner has determined that a school district has demonstrated a pattern in its Annual Estimate of Enrollment of English Language Learners of consistent underestimation of enrollment at the district or school level of English Language Learners in the same grade and who spoke the same home language, the Commissioner may direct the school district to establish Bilingual Education programs as the Commissioner deems necessary to ensure that appropriate opportunities to participate in Bilingual Education programs are provided to English Language Learners.

(e) *Program Continuity.* Each district shall provide program continuity such that all students designated as English Language Learners can continue to receive the program type (i.e., Bilingual Education or English as a New Language) in which they were initially enrolled, as long as the students remain designated as English Language Learners and, in the case of a Bilingual Education program, there were at least fifteen (15) students enrolled in a grade in such program in the district the prior school year.

(f) *Parental Notification and Information.*

(1) The parent or other person in parental relation of a student designated as an English Language Learner who is a new entrant, as defined in section 117.2(d) of this Title, shall be provided a high quality orientation session on the state standards, assessments, and school expectations for English Language Learners, as well as the program goals and requirements for Bilingual Education and English as a New Language programs, as prescribed by the commissioner. Such orientation shall occur prior to a student' s enrollment in a program provided that a student shall not be withheld from timely program placement if a parent or person in parental relation does

not attend an orientation session. Such orientation shall be provided in a language or mode of communication that the parent or person in parental relation best understands.

(2) Following such orientation, the parent or other person in parental relation of a student designated as an English Language Learner shall be notified, in English and the language or mode of communication the parent or other person in parental relation best understands, that, where available, Bilingual Education shall be the default program. Such notice must also indicate that a parent or person in parental relation may direct that his or her child be placed in an English as a New Language program if the parent or person in parental relation does not want his or her child to be enrolled in a Bilingual Education program.

(i) The notification shall explain the goals and purpose of Bilingual Education and English as a New Language programs available in the district.

(ii) The notification shall state that the student will receive all required core content in all programs offered, and that participation in a Bilingual Education or English as a New Language program will not restrict the student's access to extracurricular activities offered by the school or district.

(iii) In a school that is not required to provide a Bilingual Education program, parents or persons in parental relation shall be notified of the option of transferring their child to a school within the district, provided such program is available at another school, pursuant to section 154-2.3(d)(5) of this Subpart. In New York City, such notification shall also inform parents or persons in parental relation of the right to transfer to a Bilingual Education program in a school that has not been identified as a School Under Registration Review or as a Focus or Priority School pursuant to section

154-2.3(d)(3) of this Subpart. Such notifications of the right to transfer must also indicate that transportation will be provided to a student who transfers in accordance with Education Law Section 3635 and/or district policy as applicable.

(iv) In a school where the number of eligible students requires that a Bilingual Education program be provided, but the school has been granted an exemption pursuant to section 154-2.3(d)(8) and (9) of this Subpart, the notification must explain how the school will offer to support home language as defined in Section 154-2.3(d)(7)(ii) of this Subpart, and provide a summary of its plans for instituting a Bilingual Education program the following school year.

(3) Upon notification of the parent or person in parental relation, the school district shall provide the parent or person in parental relation five (5) school days to sign and return to the district a statement that the parent or person in parental relation 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. If a parent or person in parental relation does not return the signed notification form within five (5) school days of receiving the notice, the student shall be placed in a Bilingual Education program if there is one in the school that serves the grade and home language spoken by the student or in an English as a New Language program if the school is not required to provide a Bilingual Education program. In the event that a parent or person in parental relation does not return the signed notification form within five (5) school days, the parent or person in parental relation shall retain the right to make a final decision regarding the placement of their child in a Bilingual Education or English as a New Language program.

(4) If a student is placed in an English as a New Language program because the parent or person in parental relation requested that the student not be placed in a Bilingual Education program or because the parent or person in parental relation did not make a choice and the school was not required to open a Bilingual Education program pursuant to paragraph (4) of subdivision (d) of section 154-2.3 of this Subpart, the parents or persons in parental relation shall be notified, in a language or mode of communication they best understand, that they retain the right to transfer their child to a Bilingual Education program and that transportation will be provided in accordance with Education Law section 3635 and/or district policy as applicable.

(5) School districts shall individually meet with the parents or persons in parental relation of English Language Learners at least once a year, in addition to parent-teacher conferences, quarterly progress meetings or other such scheduled meetings provided for parents or persons in parental relation of all students, to discuss the goals of the program, their child's language development progress, their child's English language proficiency assessment results, and language development needs in all content areas. This additional meeting shall include all school staff necessary to sufficiently inform the parents or persons in parental relation about the child's language development in all content areas in English and in the child's home language in the case of students enrolled in a Bilingual Education program. Such meeting shall be conducted with a qualified interpreter/translator in the language or mode of communication the parent or person in parental relation best understands. School districts shall determine the manner and form of such individual parent meetings, in accordance with local collective bargaining agreements.

(6) Each school district shall maintain records of signed notices of parents and persons in parental relation that indicate program selection as well as orientation session agendas and sign in sheets for such orientations. In the event that a parent or person in parental relation does not indicate a program choice, such information shall be recorded by the district. All such information must be accessible at all times that school is open for school staff. Signed notices of parents and persons in parental relation that indicate program selection shall be included in the student's cumulative record.

(g) Placement

(1) Except as otherwise provided in this Part, the process for initial enrollment or reentry identification and parent notification, orientation, and placement shall be completed such that a student is placed in either a Bilingual Education or an English as a New Language program within ten (10) school days after the student's initial enrollment or reentry in the school district.

(2) Except as otherwise provided in this Part, the process for initial or reentry identification and parent notification, orientation, and placement shall be completed such that a student is placed in either a Bilingual Education program or an English as a New Language program by the first day of school in September for students identified more than ten (10) business days prior to such date.

(h) Provision of Programs

For purposes of this subdivision, a unit of study and a unit of credit shall be as defined in section 100.1(a) and (b), respectively, of this Title.

(1) English as New Language K-8. Each school district shall provide an English as a New Language program in grades K-8, based on a student's English language proficiency level, as identified by the statewide English language proficiency identification assessment or the annual English language proficiency assessment, as follows:

(i) Beginner/Entering: Students shall receive at least two units of study or its equivalent of English as a New Language instruction. At least one unit of study or its equivalent shall be Stand-alone English as a New Language instruction and at least one unit of study or its equivalent shall be Integrated English as a New Language and English Language Arts instruction.

(ii) Low Intermediate/Emerging: Students shall receive at least two units of study or its equivalent of English as New Language instruction. At least one half of a unit of study or its equivalent shall be in Stand-alone English as a New Language, at least one unit of study or its equivalent shall be Integrated English as a New Language and English Language Arts instruction, and one half of a unit of study or its equivalent shall be either Integrated English as a New Language or Stand-alone English as a New Language instruction.

(iii) Intermediate/Transitioning: Students shall receive at least one unit of study or its equivalent of English as a New Language. At least one half of a unit of study or its equivalent shall be in Integrated English as a New Language and English Language Arts instruction, and at least one half of a unit of study or its equivalent shall be either Integrated English as a New Language or Stand-alone English as a New Language instruction.

(iv) Advanced/Expanding: Students shall receive at least one unit of study or its equivalent of Integrated English as a New Language and English Language Arts or another content area.

(v) Proficient/Commanding: For at least two school years following the school year in which a student is exited from English Language Learner status, as prescribed section 154-2.3(m) of this Subpart, such student shall receive at least one half of one unit of study or its equivalent of Integrated English as a New Language and English Language Arts or another content area, or such other services that monitor and support the student's language development and academic progress, as shall be approved by the Commissioner to assist Former English Language Learners once they have exited from an English as a New Language or Bilingual Education program.

(2) English as a New Language 9-12. Each school district shall, provide an English as a New Language program in grades 9-12, based on a student's English language proficiency level, as identified by the statewide English language proficiency identification assessment or the annual English language proficiency assessment, as follows:

(i) Beginner/Entering: Students shall receive at least three units of study or its equivalent of English as a New Language instruction. At least one unit of study or its equivalent shall be Stand-alone English as a New Language instruction; at least one unit of study or its equivalent shall be Integrated English as a New Language and English Language Arts; and one unit of study or its equivalent shall be either Integrated English as a New Language or Stand-alone English as a New Language instruction. A student shall earn one unit of English Language Arts credit for successful completion of

an Integrated English as a New Language and English Language Arts unit of study, one unit of credit in the content area for successful completion of each Integrated English as a New Language unit of study; and one unit of elective credit for successful completion of a second Stand-alone English as a New Language unit of study.

(ii) Low Intermediate/Emerging: Students shall receive at least two units of study or its equivalent of English as a New Language instruction. At least one half of a unit of study or its equivalent shall be in Stand-alone English as a New Language, at least one unit of study or its equivalent shall be Integrated English as a New Language and English Language Arts instruction, and one half of a unit of study or its equivalent shall be either Integrated English as a New Language or Stand-alone English as New Language instruction. A student shall earn one unit of English Language Arts credit for successful completion of Integrated English as New Language and English Language Arts unit of study or one unit of credit in the content area for successful completion of an Integrated English as a New Language unit of study, or one unit of elective credit for successful completion of Stand-alone English as a New Language unit of study.

(iii) Intermediate/Transitioning: Students shall receive at least one unit of study or its equivalent of English as a New Language Instruction. At least one half of a unit of study or its equivalent shall be in Integrated English as a New Language instruction and at least one half of a unit of study or its equivalent shall be either Integrated English as a New Language instruction or Stand-alone English as a New Language instruction. A student shall earn one unit of English Language Arts credit for successful completion of Integrated English as New Language and English Language Arts unit of study or one unit of credit in the content area for successful completion of an Integrated English as a

New Language unit of study, or one unit of elective credit for successful completion of Stand-alone English as a New Language unit of study.

(iv) Advanced/Expanding: Students shall receive at least one unit of study or its equivalent of Integrated English as New Language instruction. A student shall earn one unit of credit in a content area for successful completion of the Integrated English as a New Language unit of study in a content area other than English Language Arts.

(v) Proficient/Commanding: For at least two school years following the school year in which a student is exited from English Language Learner status, as prescribed in section 154-2.3(m) of this Subpart, such student shall receive at least one half of one unit of study or its equivalent of Integrated English as a New Language or such other services that monitor and support their language development and academic progress, as shall be approved by the Commissioner to assist Former English Language Learners once they have exited from an English as a New Language or Bilingual Education program.

(3) *Bilingual Education Programs.* A Bilingual Education program in grades K-12 shall provide:

(i) Two units of study or its equivalent in Language Arts, one in English and one in the student' s home language. English Language Arts may be provided through Integrated English as a New Language as prescribed in paragraphs (1) and (2) of this subsection. A student shall earn one half credit for each Language Arts unit of study, for a total of one combined total credit for Language Arts each year.

(ii) Content area instruction in the required content area subjects in the home language and in English (including all bilingual core 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 include a minimum of two bilingual core content areas other than Language Arts taught in both the student's home language and English), in accordance with section 100.1(a) and (b) of this Title.

(iii) English as a New Language instruction, as prescribed in section 154-2.3(h)(1) and (2) of this Subpart.

(i) *Grade Span.* The maximum allowable grade span for grouping instruction in grades K-12 English as a New Language or Bilingual Education classes is two contiguous grades, except for English Language Learners in a special class, as defined by section 200.1(uu) of this Title.

(i) *Support Services for students not demonstrating adequate performance.* For each English Language Learner who makes below specified levels of performance on the annual English language proficiency assessment, as defined by the Commissioner, the school district shall determine the additional support services to provide the student, taking into consideration evidence such as:

(1) Number of years of instruction in a Bilingual Education or English as a New Language program;

(2) English and home language literacy, content area and socio-emotional support needs of Students with Inconsistent/Interrupted Formal Education;

(3) English and home language literacy needs of Long-term ELLs;

(4) Results on the annual English language proficiency assessment exam;

(5) Bilingual Education or English as a Second language teacher recommendation;

(6) Content area teacher recommendation;

(7) Parent or other person in parental relation request;

(8) Sample of student work in English and, if possible, in their home language;

and

(9) Bilingual educational evaluation, if the student has or is suspected of having a disability.

The support services provided shall be aligned with any intervention plans (e.g., Academic Intervention Services) the school district is already providing to all students.

(k) Professional Development. Each school district shall provide professional development to all teachers and administrators that specifically addresses the needs of English Language Learners. Consistent with section 80-3.6 and section 100.2(dd) of this Title, a minimum of fifteen percent (15%) of the required professional development clock hours for all teachers prescribed by Part 80 of this Title shall be dedicated to language acquisition, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners. For all Bilingual and English as a Second Language teachers, a minimum of fifty (50%) of the required professional development clock hours prescribed by Part 80 of this Title shall be dedicated to language acquisition in alignment with core content area instruction, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners. All school districts must align and integrate such professional development for Bilingual and English as a Second Language teachers with the professional development plan for core content area for all teachers in the district.

(l) Annual Assessment. Each school district with English Language Learners shall annually assess the English language proficiency of each such student using such assessment as prescribed by the Commissioner for this purpose.

(m) Exit Criteria. (1) Each school district will annually determine if a student identified as an English Language Learner will continue to be identified as an English Language Learner. The following criteria shall be used to make a determination to exit a student from English Language Learner status:

(i) Scores at or above a state designated level of proficient/commanding on the annual English language proficiency assessment; or

(ii) Scores at or above a state designated level of advanced/expanding on the annual English language proficiency assessment in all modalities, and at or above proficient on the English Language Arts assessment required pursuant to sections 100.3 and 100.4 of this Title or met or exceeded proficiency standards as defined in section 100.18 of this Title on the Regents Examination in Comprehensive English or the Regents Examination in ELA (Common Core) or an approved alternative.

(2) Students with disabilities. Each school district will annually determine if a student with a disability who is identified as an English Language Learner will continue to be identified as an English Language Learner pursuant to Subpart 154-3 of this Part

(n) SIFE Status. Students identified as a Student with Inconsistent/Interrupted Formal Education as defined in section 154-2.3(a) of this Subpart shall continue to be identified as such until they are performing at the transitioning/intermediate level on the annual English language proficiency assessment. Once a student is performing at or above the transitioning/intermediate level on the annual English language proficiency

assessment, the student's status as a Student with Inconsistent/Interrupted Formal Education shall be removed by the school district, even though the student may continue to be identified as an English Language Learner. Upon exiting a student from SIFE status, the school district must maintain records that the student was once identified as a SIFE.

154-2.4 School District Assurances and Reporting.

(a) Assurances. Prior to the start of each school year, each school district shall submit to the Commissioner the following assurances, signed by the Superintendent or his or her designee and in a form and by a date specified by the Commissioner:

(1) English Language Learners have access to appropriate instructional and support services, including guidance programs pursuant to section 100.2(j) of this Title;

(2) English Language Learners have equal opportunities to participate in all school programs and extracurricular activities as non-English Language Learners;

(3) English Language Learners are offered Bilingual Education and/or English as a New Language programs, as required by subdivision (h) of section 154-2.3 of this Subpart;

(4) The district provides the requisite number of Bilingual Education programs as prescribed in section 154-2.3(d) of this Subpart, or has received a one-year exemption under section 154-2.3(d) and is actively recruiting qualified staff for such programs;

(5) Parents or other persons in parental relation of English Language Learners receive orientation and notification about program types, as prescribed in section 154-2.3(f) of this Subpart.

(6) English Language Learners are given the requisite amount of English as a New Language and Home Language Arts instruction as prescribed in section 154-2.3(h) of this Subpart;

(7) Teachers in the district' s Bilingual Education and English as a New Language programs are appropriately certified pursuant to Part 80 of this Title;

(8) Teachers of English Language Learners receive the requisite number of in-service professional development, as prescribed in section 154-2.3(k) of this Subpart and Part 80;

(9) The district will comply with the requirements of this Part and the provisions of the Education Law governing programs for students designated as English Language Learners;

(10) The programs for English Language Learners will be administered in accordance with applicable federal and state law and regulations and the district' s comprehensive plan as described in paragraph (b) of this subdivision.

(b) Plan. Prior to the start of each school year, each school district shall develop a Subpart 154-2 Comprehensive Plan in a form specified by the Commissioner. Such plan shall be submitted to the Commissioner prior to the start of each school year by a date specified by the Commissioner. Each plan shall include the following:

(1) The district' s philosophy regarding the education of its English Language Learners, including but not limited to program types offered in the district, including programs, if they exist and/or instructional practices, specifically for subpopulations of English Language Learners (Students with Inconsistent/Interrupted Formal Education,

English Language Learners with Disabilities, Newcomer English Language Learners, Developing English Language Learners, Long-Term English Language Learners, and Former English Language Learners), and an explanation of the supporting research for each program as well as the goals and strategies of each program;

(2) The district's administrative practices to screen, identify and place English Language Learner in appropriate programs, as well as identify Students with Inconsistent/Interrupted Formal Education, English Language Learners with Disabilities, Newcomer English Language Learners, Developing English Language Learners, Long-Term English Language Learners, and Former English Language Learners;

(3) The district's plan to provide parents and other persons in parental relation with information about all Bilingual Education and English as a New Language programs available in the district as well as information and notices regarding program placement and the rights of such parents or persons in parental relation, in the language or mode of communication that parents and persons in parental relation best understand;

(4) The district's system to annually measure and track the academic progress and English language proficiency of English Language Learners and use of data to drive instruction;

(5) The district's curricular and extracurricular services provided to English Language Learners;

(6) The district's administrative practices to annually evaluate English Language Learners;

(7) The district's procedure to identify support services for English Language Learners as prescribed in section 154-2.3(i) of this Subpart that are aligned with any intervention plans the school district is already providing to all students, including the district's services, programs and supports, if they exist and/or instructional practices, for Students with Inconsistent/Interrupted Formal Education, English Language Learners with Disabilities, Newcomer English Language Learners, Developing English Language Learners, Long-Term English Language Learners, and Former English Language Learners; and

(8) The district's policies and procedures to refer English Language Learners who are students with disabilities to the Language Proficiency Team (LPT) during the 2015-2016 school year, or to the Committee on Special Education (CSE) during the 2016-2017 school year and thereafter, to make determinations consistent with the requirements of this Subpart.

(9) The district's procedures to exit English Language Learners and Students with Inconsistent/Interrupted Formal Education;

(10) The district's services to support Former English Language Learners, as prescribed in sections 154-2.3(h)(1)(v) and 154-2.3(h)(2)(v).

(c) Reporting. Each school district shall annually submit to the Commissioner a data and information report in such form(s) and pursuant to such timeline(s) prescribed by the Commissioner. The report must include the following:

(1) A summary of the number of ELL students in the district, disaggregated by grade level, home language and by program type;

(2) A report by building of the number of ELL students identified in the preceding school year by grade level, home language and program type;

(3) A report by building of the number of ELL students, if any, who have not received either Bilingual Education or English as a New Language instruction, and the reason such students did not receive such instruction as required by sections 154-2.3(g) and (h) of this Subpart;

(3) A summary of the number of Students with Inconsistent/Interrupted Formal Education, English Language Learners with Disabilities, Newcomer English Language Learners, Developing English Language Learners, Long – Term English Language Learners, and Former English Language Learners by grade level, home language and program type;

(4) A summary of annual English language proficiency assessment, English Language Arts and Mathematics outcomes by subpopulation (Students with Inconsistent/Interrupted Formal Education, English Language Learners with Disabilities, Newcomer English Language Learners, Developing English Language Learners, Long – Term English Language Learners, and Former English Language Learners) by grade level;

(5) A summary of the number and qualifications of teachers and support personnel providing services to ELLs; and

(6) The expenditure of State, local and federal funds in the prior year on programs and services for ELLs.

(7) A summary of all students for whom the district has requested a Request for Extension of Services, as defined in section 154-2.2(f) of this Subpart. Such summary must include the name of all such students, including but not limited to transfer students and graduates from grades six (6), eight (8) or nine (9). Such summary need not include students who scored proficient/commanding on the annual English language proficiency assessment, students discharged from the New York State public school system, students who have graduate from high school, or students enrolled in nonpublic schools.

8 NYCRR SUBPARTS 154-1 & 154-2

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on July 9, 2014, the State Education Department received the following comments:

SCOPE OF SUBPART AND APPLICABILITY [154-2.1]

COMMENT:

Provision in 154-2.1(b) allowing charter schools to implement the provisions of new Subpart 154-2 “or an alternative language instruction educational program based on scientifically based research and approved by their charter entity” will foster inconsistency across the charter school sector regarding what is necessary to comply with English Language Learner (ELL) civil rights obligations.

DEPARTMENT RESPONSE:

Education Law §2854(1)(b) provides that Charter Schools shall meet the same Civil Rights and Student Assessment requirements applicable to other public schools, except as otherwise specifically provided in Article 56 of the Education Law. At the same time, Education Law provides charter schools broad latitude in how they organize their instructional program. The proposed regulations are consistent with these requirements of Education Law.

COMMENT:

Providing language support at an early age will help young ELLs enter school better able to access the curriculum and learn. Therefore, revise rule to provide for

applicability of Part 154 to limited English proficient students in prekindergarten programs, with adjustments to address the fact that prekindergarten's English proficiency cannot be evaluated through the New York Identification Test for English Language Learners (NYSITELL) as well as fact that Universal Pre-kindergarten class size is capped at 18 students and hence would not ever meet the 20 student trigger for bilingual education set forth in 154-2.3(d).

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed rulemaking. The proposed regulations are intended to update the regulations pertaining to programs and services that are required by Education Law section 3204. It is anticipated that the Regents may consider at a future time potential amendments to regulations pertaining to students enrolled in Prekindergarten programs.

DEFINITIONS [154-2.2]

COMMENT:

Add a definition for "Dual Language Program" and specify guidelines on program elements that must be met to qualify as a Dual Language program. Currently this is a catch-all for a variety of program models, with varying language allocation methods and different ratios of native English speakers and native speakers of the program's language. A standard definition would create more consistency and accountability. Also recommend including a range of ratios of native English speakers and native speakers of the program's language, and an articulation that to the extent possible ELLs should get priority to fill the slots for native speakers of the program's language. The

definition should also mandate that ELLs who attend Dual Language programs receive English as a New Language (ENL) instruction and that ELLs be enrolled in a Dual Language program for that district to count the program as one that meets ELLs' needs.

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

Support expressed for requirement that Bilingual Education programs include at least two bilingual core content area courses, but note that ideally school districts should be incentivized to offer more bilingual core content area courses to the extent possible within staffing and accreditation constraints.

DEPARTMENT RESPONSE:

The Department agrees, and will encourage districts to offer more bilingual core content area courses. If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

Agree that delineating "Developing" and "Long-Term" ELLs is helpful, but recommend that "Developing" ELLs who previously would have been considered "Long-Term" ELLs remain eligible for same services as before. This affects students who have been ELLs for 6 years because these students are currently "Long-Term" but will be "Developing" under the new definition.

DEPARTMENT RESPONSE:

The proposed regulations do not change the classification of students who have received six years of service. Under both the current and proposed regulations a Long Term ELL is a student who has been an ELL for 7 years or more.

COMMENT:

Strongly support new definitions for teacher and interpreter/translator qualification, which explicitly identify linguistic access and cultural competency as key qualifications, but recommend that “neutrality” be added to the definition of qualified interpreter/translator and that qualified interpreter/translator receive training related to neutrality and be required to inform parent that he or she is a neutral party for communication purposes and will maintain all communications in confidence.

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

Support delineation of Integrated ENL and Stand-Alone ENL, as well as the articulation of teachers’ qualifications for Home Language Arts. These changes will help ensure more consistent high-quality content infusion and English instruction.

DEPARTMENT RESPONSE:

No response is necessary as the comment is supportive.

COMMENT:

With respect to the definition of English Language Learners, please provide a State-wide tool that enables a screener to consistently and accurately determine if a child speaks “little or no English” before progressing to the NYSITELL.

DEPARTMENT RESPONSE:

The entire identification process, including the home language questionnaire, serves as the screening tool that determines the eligibility of a student to take the NYSITELL. If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

With respect to the definition of an English as a New Language program, there is no research to support the two component models: (1) 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 (2) an English language development component (Stand-Alone and/or Integrated English as a New Language).

DEPARTMENT RESPONSE:

Extensive documentation regarding The Theoretical Foundations of the New York State Bilingual Common Core Initiative can be found at:
<https://www.engageny.org/resource/new-york-state-bilingual-common-core-initiative>

INITIAL AND REENTRY PROCESS [154-2.3(a)]

COMMENT:

Requiring ELLs to be identified before final school placement will reduce program mismatch and facilitate efficient placement of ELLs in programs appropriate to their needs and in accordance with informed parent choice.

DEPARTMENT RESPONSE:

No response is necessary as the comment is supportive.

COMMENT:

The current initial entry process/determination of English proficiency is appropriate, and the Home Language Questionnaire (HLQ), individual formal review, and NYSITELL are sufficient. Obtaining an additional student sample and collecting additional student work is not necessary – if a student has a permanent school record, why ask for additional student work? General education students are not required to submit student work samples – why focus on ELL students? Review of student’s abilities and work samples will make the interview process much longer and impact the ability of districts with large, transient ELL populations to meet the 10 day requirement. It is almost impossible, even in a district with a moderate ELL population, to test all eligible new admits, troubleshoot an IT function, and send appropriate notification letters regarding existing/exiting students and schedule new parent notification sessions within the 10-day period. Recommend that the notification period be extended based on size of population – for ex. 50 NYSITELL and under to be completed in 10 days, 51-100 in 15 days etc.

DEPARTMENT RESPONSE:

The Department disagrees. Stakeholders who participated in focused forums regarding the Part 154 regulations strongly supported the inclusion of student work as it will provide a more comprehensive identification and placement process. Focus forum participants agreed that the proposed 10 day period for parental notification is adequate. If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

What evaluation instruments and criteria exist for determining “grade level literacy in their home language and grade level in math” under proposed 154-2.3 Step 2? Who will administer and score these evaluations?

DEPARTMENT RESPONSE:

As of 2012-2013 SY, districts are required to identify Students with Interrupted Formal Education (SIFE), which requires determining grade level literacy in their home language and math. See page 194 of the NYSED SIRS 2013-14 manual for more information (<http://www.p12.nysed.gov/irs/sirs/2013-14/2013-14SIRSMannual9-18-20140725.pdf>). As always, the Department will continue to work with districts to identify and develop best practices and shared resources. If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department. For math, districts should use existing school based assessments to determine the student’s grade level in math. Qualified personnel as referred to in section 154-2.3 will be able to administer and score the identification assessment.

COMMENT:

What will the Statewide English language proficiency identification assessment referenced in section 154-2.3(a) (4) [Step 4] consist of? What assessments will the State administer to young children entering Kindergarten?

DEPARTMENT RESPONSE:

Currently, the English language proficiency identification assessment for K-12 is the New York State Identification Test of English Language Learners (NYSITELL).

COMMENT:

How would work samples be obtained? Obtaining work samples to evaluate should be mandated for at least the top five languages spoken in the State. Guidelines for reviewing work samples should be provided.

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

There may be a lack of trained personnel to implement the identification process and administer the HLQ interview. Concerns were raised regarding small school districts' ability to comply with the proposed rule, including a lack of available of qualified personnel. Concerns were also raised that ESL teachers lack time to administer this and administration of HLQ to all students will reduce ESL teacher-student contact time. Standard interview questions, suitable for State-wide use should be developed.

DEPARTMENT RESPONSE:

Under the proposed regulations, qualified personnel to administer the Home Language Questionnaire (HLQ) include not only ESL teachers, but also Bilingual Education teachers or any certified teacher trained in cultural competency, language development, and the needs of English Language Learners. Thus, the proposed amendments do not require that only ESL teachers be relied upon to administer the initial identification process, including the administration of the HLQ. Districts may use any certified teacher trained in cultural competency, language development, and the

needs of English Language Learners. If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

The rule needs to clarify what constitutes “speaking” a language other than English. A screening test in a student’s native language test similar to the NYSITELL should be developed so that all districts are using the same criteria for admitting students into bilingual programs and identifying students to take the NYSITELL.

DEPARTMENT RESPONSE:

The HLQ is designed to determine whether a student speaks a language other than English. This provision is currently in Part 154 and has remained unchanged since adoption by the Regents in 1990 and has not been proposed for amendment pursuant to current rule making. As always, the Department will continue to work with districts to identify and develop best practices and shared resources.

REVIEW OF IDENTIFICATION DETERMINATION [154-2.3(b)]

COMMENT:

Support provision requiring that records indicate a parent’s preferred language and keep track of notices and forms generated during the identification and placement process in the ELL student’s cumulative record. Recommend that “records” also include “Ever an ELL” designation for students who have transitioned out of an ELL status as well as the method of ELL instruction of each year of ELL status. This can be helpful in comparing long-term retention, advancement and graduation rates between different program types. This information will be useful to parents in making educational

decisions for their children, as well as educators, administrators and State Education Department officials in prioritizing the most effective program types.

DEPARTMENT RESPONSE:

The Department will take this recommendation under consideration for a possible future rulemaking.

COMMENT:

Recommend review process be extended to 60 days.

DEPARTMENT RESPONSE:

The Department disagrees. As part of the development of the proposed Part 154 regulations, extensive feedback was received from stakeholders on these proposed timelines. Stakeholders raised concerns that extending the timeline would result in students receiving inappropriate placements and instruction for a significant portion of the school year.

COMMENT:

Was it intended that a student 18 years old or older not be included in the notice of the superintendent's acceptance of the principal's recommendation to change a student's designation in 154-2.3(b)(5) or in the notice of reversal of a determination in 154-2.3(b)(6)?

DEPARTMENT RESPONSE:

The department agrees and will make a non-substantial change to section 154-2.3(b)(5) and (6) to include students 18 years of age or older.

PROGRAM REQUIREMENTS [154-2.3(d)]

COMMENT:

Strongly support provision for an annual estimate of ELLs expected to enroll in each school the following school year, which will improve program planning and continuity. Support retaining the trigger in 154-2.3(d)(4) to create bilingual programs when 20 or more ELLs of the same grade are assigned to a school with the same home language other than English.

DEPARTMENT RESPONSE:

No response is necessary as the comment is supportive.

COMMENT:

Support creating more quality bilingual programs to develop academic proficiency in both the native language and English. Currently, ESL instruction is the most prevalent form of ELL instruction. However, the primacy of ESL runs contrary to cognitive research pointing to first language education and support as critical to second language acquisition.

DEPARTMENT RESPONSE:

Comment is supportive in terms of quality bilingual programs to develop academic proficiency in both the native language and English. Students in New York State, as prescribed in the regulations, are entitled to receive ESL instruction, at a minimum.

COMMENT:

Provision in 154-2.3(d)(2), requiring districts in which the sum of each school's annual estimate of enrollment equals 20 or more ELLs of the same grade level to provide a sufficient number of bilingual education programs in the following school year

will create transportation logistical issues for students who attend an out-of-zone school where the bilingual program is held. Suggests rule be revised to require bilingual education classes be created only when there are 20 or more ELLs of same grade and language in the same school.

DEPARTMENT RESPONSE:

The Department disagrees. In order to provide English Language Learners access to high quality bilingual education, stakeholders have strongly suggested the creation of additional bilingual opportunities that can meet the diverse needs of ELLs.

COMMENT:

Districts with small/medium-sized ELL populations often don't have enough ELLs in a school building to create a bilingual program. The proposed rule will force districts to create bilingual sections, which would force the ELLs to be displaced from their home school and participate in a magnet bilingual program in another building, thus having a terrible social and emotional impact on our students. It is crucial for ELLs to be able to interact with their peers so they can build their Basic Interpersonal Communication Skills (BICS). If they do not have these interactions, it will take longer for the BICS to develop and delay the language acquisition process. The determination to provide a Bilingual Education program should be left to the individual school district based on the individual needs of its students.

DEPARTMENT RESPONSE:

The Department disagrees. The proposed regulations do not force any students to attend a different school than that which they would attend if the students were not English Language Learners. While the regulations expand the opportunities for

students to be placed in bilingual programs, parents have the right to decline this placement for their child and have their child remain in his or her home school.

COMMENT:

Submitting required information regarding ELL enrollment etc. is not possible without receiving the NYSESLAT scores prior to submitting such information. This requirement will cost the district a lot of time and money to send estimates of student enrollment based on previous 3 years of enrollment data.

DEPARTMENT RESPONSE:

The Department disagrees. Districts are expected to have this data available and accessible. Current year NYSESLAT scores are not needed to create the estimate.

COMMENT:

It is unreasonable to expect a parent to sign and return placement notification letter in five days. More time needs to be considered.

DEPARTMENT RESPONSE:

The Department anticipates addressing these issues in a separate proposed rulemaking in the near future.

COMMENT:

Isolating a Bilingual Education program into one school significantly detracts from multicultural environments. The majority language population would experience a distinct isolation from their peers. Classes would not include diversity, and learning experiences would be limited. The separation would potentially negatively impact the collaborative and cohesive nature of entire communities.

DEPARTMENT RESPONSE:

The Department disagrees. District-wide Bilingual Education programs create additional academic opportunities for students. Districts can choose to implement Two-way Dual Language programs which distinctly promote diversity, multilingualism, and positively impact the collaborative and cohesive nature of communities.

COMMENT:

Some districts have continuous registration. It would be fiscally impossible to justify posting certified personnel in a registration center daily to determine program eligibility.

DEPARTMENT RESPONSE:

The Department disagrees. Districts must provide qualified personnel as defined in CR Part 154 to identify, assess, and place ELL students. If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department which may afford districts the flexibility to design their daily schedules in the best interests of the program, including issues of continuous registration.

COMMENT:

Since many families do not register until late August or September, it will be difficult to predict the number of those who would like to participate in bilingual programs.

DEPARTMENT RESPONSE:

The Department disagrees. Estimates of all programs are to be based on the previous three years' enrollment data.

COMMENT

Oppose 154-2.3(d)(6) which creates a 'less than 5% of the Statewide ELL population' trigger for districts to qualify to apply for up to five one-year exemptions to the mandate for creating bilingual programs. Given that all languages other than Spanish and Chinese fall into this category, we believe that this provision could severely constrain availability of bilingual education in districts that have substantial concentrations of other home languages. We recommend that districts be allowed to apply for an exemption from home languages spoken by less than 5% of the district's ELL population.

DEPARTMENT RESPONSE:

The Department disagrees. Based on stakeholder feedback, the Department believes it is appropriate to allow districts to apply for annual one-year exemptions from providing bilingual programs in languages representing less than 5% of the Statewide ELL population.

COMMENT:

Section 154-2.3(d)(6) provides for a maximum of five one-year exemptions from the requirement to provide bilingual programs in accordance with section 154-2.3(d)(2). Five years may be too long and encourage districts to resist providing bilingual programs on financial grounds.

DEPARTMENT RESPONSE:

Five years is the maximum exemption period. The Department will determine on a case-by-case basis annually whether a district warrants further one year exemptions.

PROGRAM CONTINUITY [154-2.3(e)]

COMMENT:

Support the proposed rule's provisions on program continuity, but anticipate major difficulties with compliance. Superintendents and Board of Education members will need extensive education as to these proposed requirements coming from the Commissioner and not directors and coordinators of ELL services.

DEPARTMENT RESPONSE:

In clarification, CR section 154-2.3(k) proposes that each school district provide professional development to all teachers and administrators that specifically addresses the needs of English Language Learners. If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

PARENTAL NOTIFICATION AND INFORMATION [154-2.3(f)]

COMMENT:

Support parental notification and information provisions, and suggest explicitly requiring that parents be notified at their orientation section of their rights. SED should provide guidance to ensure that schools address progress, language-development needs and other ELL-specific goals within the context of regular parent-teacher conferences or other scheduled meetings with parents.

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

We believe that school staff should meet with parents/guardians minimally twice a year instead of at least once a year. Meetings should take place in the parents' home languages and should be facilitated by linguistic and culturally competent qualified school staff. When scheduling meetings with parents, school staff should be required to accommodate the diverse working schedule of parents by offering meetings at different times of the day during a meeting week.

DEPARTMENT RESPONSE:

In clarification, the Department is proposing a meeting for parents of English Language Learners in addition to the parent-teacher meeting. The proposed rule does not mandate how the additional parent meeting should be conducted. Districts have flexibility to determine the most effective manner of conducting these parent meetings given local scheduling needs, collective bargaining agreements, etc. If the proposed regulations are approved by the Board of Regents, guidance will be issued to clarify how meetings may be conducted.

COMMENT:

In lieu of a separate meeting between the ESL teacher and parents, a classroom parent-teacher meeting in which an ESL teacher is present should be considered as meeting the requirement for an annual meeting with ELL parents. In addition, allowance should be made for telephone conferences in lieu of the meeting. This would alleviate scheduling difficulties for both parents and teachers associated with holding a separate meeting for only the ESL teacher and parents. Requiring a separate meeting is impractical and would require negotiation with the teacher's union.

DEPARTMENT RESPONSE:

The Department is proposing an additional meeting for parents of English Language Learners in order to provide parents with specific information regarding their child's language development needs. The parent-teacher meeting does not satisfy this requirement. The proposed rule does not mandate how the additional parent meeting should be conducted. Districts have flexibility to determine the most effective manner of conducting these parent meetings given local scheduling needs, collective bargaining agreements, etc. If the proposed regulations are approved by the Board of Regents, guidance will be issued to clarify how meetings may be conducted.

COMMENT:

The terms "meet" and "meetings" should be changed to "confer" and "conference, which may be by telephone" to clearly indicate that the discussion required by the provision can occur by telephone, instead of a face-to-face meeting.

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

Further explanation is needed of documentation requirements, and what notices and forms must be retained.

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

Please consider providing translations of State assessments and State assessment explanations and other documents found on www.NYSED.gov and www.engageny.org in all languages as seen throughout the State. Limiting documents to just the top five languages places a disproportionate burden on districts with families who read lower incidence languages.

DEPARTMENT RESPONSE:

The Department will take this recommendation under consideration.

PROVISION OF PROGRAMS [154-2.3(h)]

COMMENT:

Support was expressed for requirement to provide instruction in which ESL methodologies are integrated into content area instruction, in addition to Stand-Alone ESL. Experience in implementing and sustaining a highly successful model for educating ELLs has proved the effectiveness of instructional practices that allow students to develop language skills in context, rather than in isolation.

DEPARTMENT RESPONSE:

No response necessary as comment is supportive.

COMMENT:

Few ESOL teachers have elementary education certification and it is not necessary for ESOL teachers to be dually certified in order to assist students with content area learning. For small districts, with students dispersed among classrooms and grades, managing co-teaching with multiple classroom teachers will be difficult to schedule for an ESL teacher who must also manage pull-out groups and who may be

serving more than one school per day. Instead, it should be an option at the discretion of the school district and based on unique needs of students and part of a continuum of services, similar to that afforded to special education students or AIS students.

If the integrated classroom includes many more non-ELLs than ELLs, the non-ELLs may perceive time spent on language structures unnecessary, and the tendency will be to accelerate content teaching and minimize co-teaching to the level of “push-in supporting”, resulting in the ELL students not receiving sufficient time for language development and struggling to keep up with the accelerated content teaching. It would be counterproductive to send an ESL teacher into a classroom to teach an “integrated” unit of study when there may only be a very small number of ESL students. Districts with limited resources may be forced to group ELLs in very large instructional groups that may impede learning interactions with non-ELL students and cause behavior issues. Many ESL students need targeted, individualized instruction by a Teaching English to Speakers of Other Languages (TESOL) certified teacher, in addition to supported, differentiated classroom instruction. Mandating the service unit breakdown of co-teaching vs. Stand-Alone does not allow for individualized programs or meeting the unique need of learners and should be at discretion of the ESL and classroom teachers.

DEPARTMENT RESPONSE:

The Department disagrees. There has been extensive research conducted over the last 10 years indicating that the integration of language and content instruction leads to higher student outcomes. See e.g., Duffy, P. (2010). Language socialization into academic discourse communities; Coyle, D., Hood, P. & Marsh, D. (2010). CLIL:

Content and language integrated learning. New York, NY: Cambridge University Press; Snow, C., Griffin, P., and Burns, S. (2007). Knowledge to support the teaching of reading: Preparing teachers for a changing world. Hoboken, NJ: John Wiley & Sons. Annual Review of Applied Linguistics, 30, 169-192.). Based on a review of this research the Department is proposing the new instructional model of Integrated English as a New Language *in addition to* Stand-Alone English as a New Language instruction.

COMMENT:

Integrated ESL will result in a loss of recognition of ESL as a core subject area, and reduce ability to close students' gaps and build background. It will require an increase in the bilingual teaching staff, without taking into account the lack of qualified bilingual teachers.

DEPARTMENT RESPONSE:

The Department disagrees. In the proposed regulations, Stand-Alone ESL remains an important component of ESL programming for all ELL proficiency levels. Integrated English as a New Language instructional model is being proposed in combination with a Stand-Alone English as a New Language instructional model rather than in lieu of Stand-Alone instruction. There has been extensive research conducted over the last 10 years that indicates that the integration of language and content instruction leads to higher student outcomes. See e.g., Duffy, P. (2010). Language socialization into academic discourse communities; Coyle, D., Hood, P. & Marsh, D. (2010). CLIL: Content and language integrated learning. New York, NY: Cambridge University Press.; Snow, C., Griffin, P., and Burns, S. (2007). Knowledge to support the

teaching of reading: Preparing teachers for a changing world. Hoboken, NJ: John Wiley & Sons. Annual Review of Applied Linguistics, 30, 169-192.)

COMMENT:

Decisions on whether to provide “integrated” units of credit should be left to the discretion of local school authorities. Districts should be allowed the option to continue to provide ELLs with consistent, Stand-Alone units of study and the ability to provide push-in services when deemed appropriate to meet the individual needs of ELL learners.

DEPARTMENT RESPONSE:

The Department disagrees. The Department has always been responsible for, and will continue to be responsible for establishing units of study and credits. Accordingly, decisions regarding the provision of “integrated” units of credit fall within the Department’s responsibility.

COMMENT:

What will the instructional time requirements (Integrated and Stand-Alone classes) be for each proficiency level? Define how credit for ESL classes could be awarded under this scenario.

DEPARTMENT RESPONSE:

The proposed rule defines how credit for ESL classes would be awarded in both Integrated and Stand-Alone ESL classes. See 154-2.3(h)(2) where units of study and credits for grades 9-12 are outlined based on the student’s level of language proficiency.

COMMENT:

What is the basis for requiring an integrated instruction model in the upper levels of student proficiency in lieu of free-standing ESL instruction?

DEPARTMENT RESPONSE:

The new instructional model of Integrated English as a New Language is being proposed by the Department based on a review of over a decade of research. There has been extensive research conducted over the last 10 years that indicates that the integration of language and content instruction leads to higher student outcomes. See e.g., Duffy, P. (2010). Language socialization into academic discourse communities; Coyle, D., Hood, P. & Marsh, D. (2010). CLIL: Content and language integrated learning. New York, NY: Cambridge University Press.; Snow, C., Griffin, P., and Burns, S. (2007). Knowledge to support the teaching of reading: Preparing teachers for a changing world. Hoboken, NJ: John Wiley & Sons. Annual Review of Applied Linguistics, 30, 169-192.). Moreover, the Integrated English as a New Language instructional model is being proposed in combination with a Stand-Alone English as a New Language instructional model rather than in lieu of Stand-Alone instruction.

COMMENT:

An ESL teacher is also a qualified English teacher. It is a certification area, not an extension. Requiring that even beginners at the secondary level be placed in a mainstream ELA class, instead of having two or three Stand-Alone ESL classes, does not benefit the students and would cause serious difficulties with our scheduling/staffing. A half-unit of integrated ESL means a student would be in ELA class every other day, which does not lend itself to consistent academic programming because they could potentially miss ELA class every other day.

DEPARTMENT RESPONSE:

The K-12 TESOL certification and the certification for content area instruction, such as English Language Arts, are two distinct certification areas. See Part 80 regulations <http://www.highered.nysed.gov/tcert/part80-2.html#Section2.3>. The proposed rule does not mandate only one way to provide the Integrated and Stand-Alone English as a New Language instructional model. For example, a student at certain proficiency levels may only receive one half unit of Integrated English as a New Language instruction, which means the student would receive a full unit of English Language Arts instruction, but only receive support from a co-teaching integrated instructional model for half of the week. In addition, the requirements to provide one half unit of Integrated English as a New Language instruction is only a mandated minimum.

COMMENT:

Concern expressed over implementation of the option to have dually certified teachers provide integrated English as a New Language instruction. There has been no effort to prepare the field for this change through modification of the relevant pre-service preparation requirements or changes in how teachers are appointed and gain tenure. May foster district practice, with respect to dual or multiple certified teachers, to appoint the teacher under one license and assign the teacher to teach some or all of the day under another license, which may affect tenure eligibility and seniority rights.

DEPARTMENT RESPONSE:

Districts will have the 2014-2015 school year to create an implementation plan for the proposed regulations. If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

While we agree that students benefit from receiving instruction from content teachers with ESL expertise, we are not convinced that such instruction should constitute an ESL service and are concerned that students receiving instruction will not receive the level of support they need to progress towards English language proficiency.

DEPARTMENT RESPONSE:

Please refer to the Theoretical Foundations of the New York State Bilingual Common Core Initiative for research around the delivery of instruction in the content area in English and the home language: <https://www.engageny.org/resource/new-york-state-bilingual-common-core-initiative>.

COMMENT

The co-teaching model (requiring Integrated ELL instruction taught by either a dually certified teacher or a classroom teacher and an ESL teacher) should not be mandated because it may not be optimal for all students and is financially burdensome on medium or smaller school districts.

DEPARTMENT RESPONSE:

The Department disagrees. There has been extensive research conducted over the last 10 years indicating that the integration of language and content instruction leads to higher student outcomes. See e.g., Duffy, P. (2010). Language socialization into academic discourse communities; Coyle, D., Hood, P. & Marsh, D. (2010). CLIL:

Content and language integrated learning. New York, NY: Cambridge University Press; Snow, C., Griffin, P., and Burns, S. (2007). Knowledge to support the teaching of reading: Preparing teachers for a changing world. Hoboken, NJ: John Wiley & Sons. Annual Review of Applied Linguistics, 30, 169-192.). Based on a review of this research the Department is proposing the new instructional model of Integrated English as a New Language *in addition to* Stand-Alone English as a New Language instruction. In addition, the proposed provision allows districts to amplify their resources. Proposed regulations regarding the co-teaching model are not adding instructional minutes for students or teachers, but reformatting the delivery of instruction as prescribed by the aforementioned research.

COMMENT:

For many districts, the need to completely reconfigure their freestanding ESL program imposes very high compliance costs and would have a substantial impact on jobs and employment opportunities for ESL certified instructors. ELL students are often distributed across several mainstream classrooms at each grade level, making the co-teaching model highly impractical and virtually impossible to implement on a large scale. Districts may be forced to hire many additional content-area staff or eliminate and replace teachers who are solely ESL certified teachers with dual and/or bilingual certified staff.

DEPARTMENT RESPONSE

The new instructional model of Integrated English as a New Language is being proposed by the Department based on a review of over a decade of research. There has been extensive research conducted over the last 10 years that indicates that the

integration of language and content instruction leads to higher student outcomes. See e.g., Duffy, P. (2010). Language socialization into academic discourse communities; Coyle, D., Hood, P. & Marsh, D. (2010). CLIL: Content and language integrated learning. New York, NY: Cambridge University Press; Snow, C., Griffin, P., and Burns, S. (2007). Knowledge to support the teaching of reading: Preparing teachers for a changing world. Hoboken, NJ: John Wiley & Sons. Annual Review of Applied Linguistics, 30, 169-192.). Moreover, the Integrated English as a New Language instructional model is being proposed in combination with a Stand-Alone English as a New Language instructional model rather than in lieu of Stand-Alone instruction. If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

Support provision of programs and supports for recently exited former ELLs, however, suggest also indicating that parents may decline such supports.

DEPARTMENT RESPONSE:

The Department disagrees. Services to former English Language Learners are akin to Academic Intervention Services, which parents may not decline for their children.

COMMENT:

The annual NYSESLAT should be designed so that students reaching proficiency will, in most cases, be ready to score at level 3 on a NYS ELA assessment.

DEPARTMENT RESPONSE:

The Department follows a comprehensive, psychometrical rigorous standard setting process to establish the proficiency levels on the NYSESLAT.

COMMENT:

Requiring exited Proficient/Commanding ELLs to receive two years of transitional services instead of one year is not necessary for all students, will have an adverse impact on staffing, and will take valuable instruction time away from ESL teachers and from transitional students who do need transitional services. School districts should have discretion to monitor transitional students and provide appropriate services as needed. The additional unfunded mandate requiring up to two additional years of service will be extremely difficult to meet on top of all of the other requirements that translate to additional staffing needs. Further clarification of the minimal services defined as transitional is needed.

DEPARTMENT RESPONSE:

Under current federal guidance, districts must provide transitional services to former ELL students once they become proficient in English. The Department believes that providing two years instead of one year of transitional services will ensure that former ELLs are properly monitored and supported so that they can succeed.

COMMENT:

There is no clear definition of the transitional services to be provided.

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

The existing NYSESLAT or NYSITELL levels do not match the new ELL levels and will need to be changed.

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

Need to redefine Student Learning Objectives (SLOs) and modify SLO process.

DEPARTMENT RESPONSE:

This is outside of the scope of the proposed rulemaking. The Department has existing guidance on SLOs for English as a Second Language and Bilingual Education. See <https://www.engageny.org/resource/student-learning-objective-road-map-for-english-as-a-second-language-and-bilingual>.

COMMENT:

Will tenured teachers be grandfathered in, in spite of not having a dual certification? Will there be a timeframe permitted for ESL teachers to obtain dual certification?

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed rulemaking. It is anticipated that issues relating to the comment will be addressed in a separate rulemaking.

COMMENT:

Requiring more time for ELL students, without necessary additional staffing will only mean unworkable larger groupings of mixed grade and proficiency levels. Suggests caps on classroom size groupings so appropriate staffing can be provided.

DEPARTMENT RESPONSE:

There are no additional time requirements in the proposed rule. Regulating classroom size is outside of the scope of the proposed rulemaking.

COMMENT:

How will it be determined if a student is Emerging or Transitioning since they are both currently under the level of Intermediate?

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

Will the NYSITELL and NYSESLAT results reflect these new proficiency levels?

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, new NYSESLAT and NYSITELL levels will reflect the five levels in the proposed rule.

COMMENT:

Strongly disagree with the lack of a Stand-Alone ENL period for students at the Expanding proficiency level. Most students benefit from the additional support of an ENL class.

DEPARTMENT RESPONSE:

The Department disagrees. If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

Please consider revising unit of study requirements for the secondary level, to include more pull-out time for Beginner/Entering and Low Intermediate/Emerging

students, when the student has arrived within 1 year and will not take the NYS ELA examination. These students require more dedicated time to build foundational English literacy skills, rather than scaffolds to grade-level text expectations.

DEPARTMENT RESPONSE:

The Department disagrees. In clarification, CR section 154-2.3(h)(2)(i) states that for a Beginner/Entering ELL, at least one unit of study is Stand-Alone ENL with an option for a second unit of study as Integrated or Stand-Alone. In addition, the 3rd unit of study is Integrated ELA.

COMMENT:

Unit of study for Integrated ENL needs to be taught by a certified ESL teacher and not a dually certified ESL teacher or through a co-teaching model with a general education teacher. Isn't a teacher who is permanently certified in TESOL N-12 and Common Branch N-6 qualified to teach Integrated English in Kindergarten through Sixth Grade. A teacher will be burdened with obtaining an additional certificate in order to teach Integrated ENL.

DEPARTMENT RESPONSE:

In clarification, according to CR section 154-2.2(q) personnel qualified to teach integrated English as a new language are a certified TESOL teacher and a content area teacher (i.e., co-teaching model) or a dually certified teacher. A teacher certified in TESOL N-12 and Common Branch N-6 is a dually certified teacher.

COMMENT:

The proposal that only a half unit of study can be Stand-Alone instruction for Intermediate/Emerging and Intermediate/Transitioning students means that the students

would get only about 20 minutes of Stand-Alone instruction, which is insufficient to adequately cover the topics of instruction, including preparation for the NYSESLAT examination.

DEPARTMENT RESPONSE:

In clarification, CR section 154-2.3(h)(1)(iii) and (h)(2)(iii) state that for an intermediate/transitioning ELL, at least one half of unit of study is Stand-Alone. The second half of the unit of study is an option between Integrated or Stand-Alone.

GRADE SPAN [154-2.3(i)]

COMMENT

How will small districts avoid grouping students with no more than a 2 year grade level span? The limitation of two contiguous grades also causes a staffing issue particularly at the secondary level. Instead of the banding of students by grade level, students should be grouped by proficiency level on the NYSESLAT. If a grade band is necessary, since secondary students are in mainstream classes with students from other grades, the grade span requirement should be applicable only at the elementary level.

DEPARTMENT RESPONSE:

The Department disagrees. Research shows that language instruction must be delivered in the context of academic content. See e.g., Duffy, P. (2010). Language socialization into academic discourse communities; Coyle, D., Hood, P. & Marsh, D. (2010). CLIL: Content and language integrated learning. New York, NY: Cambridge University Press.; Snow, C., Griffin, P., and Burns, S. (2007). Knowledge to support the

teaching of reading: Preparing teachers for a changing world. Hoboken, NJ: John Wiley & Sons. Annual Review of Applied Linguistics, 30, 169-192.). In order to provide appropriate academic language instruction, it must be tied to grade-level content.

COMMENT:

In NYC, elementary schools often form self-contained ESL classes because of the large number of ELLs. Classes can contain up to 32 students, ranging from new arrivals to those who tested out the previous year. Students remain together for the entire school day and year and receive instruction, including mandated services, from their regular dually-certified classroom teacher or from an ESL teacher who pushes-in to service the whole class for one or two periods a day. In reality, it is impossible for a teacher to provide instruction that meets the special language needs of beginners in this heterogeneous setting. Does anything in the proposed amendments ensure that these students will receive their mandated units of ESL instruction in a format that will meet their needs?

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

SUPPORT SERVICES [154-2.3(j)]

COMMENT:

Will long-term ELLs be extended to 7 years for funding purposes?

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed rulemaking. In clarification, CR section 154-2.2(n) defines Long-Term English Language Learners as students who have been identified as ELLs and have continuously received Bilingual/ESL program services for a total of seven or more years.

PROFESSIONAL DEVELOPMENT [154-2.3(k)]

COMMENT:

Support was expressed for requirement that districts provide professional development to all teachers and administrators that specifically addresses the needs of ELLs. As ELL population continues to expand, it is likely that the vast majority of teachers can expect to teach these students at some point, and it is necessary that they are prepared to meet their unique needs.

DEPARTMENT RESPONSE:

No response necessary as comment is supportive.

COMMENT:

Support professional development provisions, but recommend that Department consider broadening the scope of the required professional development beyond language acquisition so that districts/schools can tailor professional development to address the needs of their specific ELL populations. Professional development requirements should also be extended to building and district level school administrators.

DEPARTMENT RESPONSE:

In clarification, CR Part 154-2.3(k) states that professional development for teachers and administrators includes language acquisition, focus on best practices for co-teaching strategies, and integrating language and content instruction for English Language Learners. If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

Requirements that school districts provide a minimum of 15% of the required professional development clock hours for all teachers and 50% of the required clock hours for bilingual and ESL teachers in language acquisition are too prescriptive. Professional development should be based on the needs of the schools and their staff. Urge Regents to substitute planning requirements for professional development at the school district and local levels in place of the current percentages.

DEPARTMENT RESPONSE:

The Department anticipates addressing these issues in a separate proposed rulemaking in the near future.

COMMENT:

Requiring teachers to receive 15% ELL training may not be appropriate for schools with small ELL populations, after considering the associated funding, scheduling, and recordkeeping and reporting implications. Districts should be allowed to have discretion to determine the needed training to teachers and administrators directly involved with ELLs, and based upon local needs such as the percentage of ELL students in the district. This provision also should be clarified regarding defining 15%, 50%, and cultural competency.

DEPARTMENT RESPONSE:

The Department anticipates addressing these issues in a separate proposed rulemaking in the near future.

COMMENT:

Clarify how professional development “clock hours” will be defined and tracked by the district.

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

Percentage requirements would prevent teachers from regularly attending professional development that has a direct impact on all students. Requiring ESL teachers to have 50% of their professional development be based on working with ELLs seems redundant since their Master’s degree and teaching certification is in instructing ELLs. ESL teachers may have to turn down otherwise appropriate training (for example, on technology) because learning more outside their ESL area will skew their ratio. Regulation should be revised to require “50% of the minimum in-service training” to allow more flexibility. If ESL teachers are required to be in a mainstream ELA class more so than before, then the ESL teachers should be in all the same Common Core Learning Standards core content, differentiated instruction, and other professional development with the rest of the teachers.

DEPARTMENT RESPONSE:

All teachers must receive professional development to keep up to date with current research-based practices and to maintain their certification in New York State. In addition, the requirement that 50% of their professional development be based on working with ELLs must be embedded and integrated with professional development in content area instruction. For example, a professional development session that meets this requirement could include how to scaffold instruction in content area classes (e.g., English Language Arts, Science), or how to use technology to enhance instruction for English Language Learners.

COMMENT:

Because of the lack of qualified trainers to provide the required increase in the ESL component of professional development, will ESL teachers be expected provide professional development training in-district for their colleagues?

DEPARTMENT RESPONSE:

The Department does not mandate how districts deliver professional development, nor who delivers professional development within a district.

EXIT CRITERIA [154-2.3(m)]

COMMENT:

Support expanding exit criteria to include measures other than NYSESLAT and believe that using a combination of the NYSESLAT and the 3-8 English Language Arts (ELA) test or ELA Regents is appropriate, as is the exemption of ELLs with disabilities. However, for high school students, we propose a passing score of 65 on the English

Regents exam coupled with an advanced/expanding score on the NYSESLAT as a measure to demonstrate English proficiency.

DEPARTMENT RESPONSE:

Comment is supportive; however the proposed change is beyond the scope of the proposed rulemaking, as graduation requirements are specified in section 100.5 of Commissioner's Regulations.

COMMENT:

Support expansion of exit criteria to include results from grades 3-8 ELA and the English Regents Comprehensive examination.

DEPARTMENT RESPONSE:

No response is necessary as the comment is supportive.

COMMENT:

The exiting criteria allow school districts too much discretion to exit students as a cost cutting measure. Suggests revising rule to have BOCES, or other third party without a vested financial interest, make the determination. Suggest modifying exit criteria in §154-2.3(m) as follows:

- (i) scoring proficient on Statewide English proficiency assessment;
- (ii) a combination of NYSESLAT scores and 3-8 ELA assessment or ELA Regents scores; or
- (iii) a determination that an ELL with a disability cannot meet criteria (i) or
- (iv) because of their disability and are not in need of ELL services.

DEPARTMENT RESPONSE:

The Department disagrees. It is the responsibility of the district to determine if any student should continue to be identified as an ELL in order to provide them with the services that meet their needs.

Student with Inconsistent/Interrupted Formal Education (SIFE) [154-2.3(n)]

COMMENT:

Please consider revising unit of study requirements for SIFE students, who require additional time to develop foundational English literacy skills.

DEPARTMENT RESPONSE

The Department disagrees that the proposed regulations provide students inadequate time to develop foundational English literacy skills. If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

Suggest that SIFE status be applied to students who have attending school in the U.S. for less than a year “at the time they are identified.” The time limit should also be expanded to 24 months in order to capture students whose SIFE status is not identified within 12 months.

DEPARTMENT RESPONSE:

The Department disagrees. Many stakeholders have informed the Department that 12 months is adequate for the identification of SIFE.

COMMENT:

What will the source of diagnostic assessments in Reading and Math (in English and Spanish) be? Will they come in all languages or are districts responsible to find a qualified translator for the intake of every new ELL? Will there be recommended assessments to diagnose literacy and math gaps in SIFE students in low incident languages? How is a SIFE determination made when there are no prior records? Guidelines are needed to: (i) define grade level proficiency in home language; (ii) review math proficiency; and (iii) determine cause of SIFE designation.

DEPARTMENT RESPONSE:

As always, the Department will continue to work with districts to identify and develop best practices and shared resources. If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department. For math, districts should use existing school based assessments to determine the student's grade level in math. The student interview step of the identification process should be used to determine whether there have been interruptions or inconsistencies in schooling in the case where no prior records exist. The proposed rule would require districts to use qualified translators in the event that qualified personnel do not speak the home language of the student or parent. See 154-2.2(u).

COMMENT:

It appears that any identified ELL student who diagnostically measures two or more years below grade level (and is not determined to have a disability) would be identified as SIFE - is this correct? Will the State provide resources and training specific to meeting the unique needs of SIFE students? Also, there would be insufficient time to determine whether a student is a SIFE.

DEPARTMENT RESPONSE:

The definition of Students with Inconsistent/Interrupted Formal Education (SIFE) in the proposed rule [see 154-2.2(y)] requires as part of the identification process that, at the time of identification, the student has attended school in the United States for less than twelve months, and must also have had some inconsistent or interrupted schooling prior to arrival in the United States. Thus, not all ELL students who diagnostically measure two or more years below grade level would be designated as SIFE students. The 12 month time frame only refers to identification, not length of services.

Regarding the timeline required to identify SIFE students, the Department has determined that it is educationally sound to identify the needs of a student upon initial enrollment and within the 10 day identification requirement. If students are not properly identified as soon as possible, they will not receive appropriate services and placement.

COMMENT:

Identification as an ELL should not be a prerequisite for identification as SIFE.

DEPARTMENT RESPONSE:

This is outside of the proposed rulemaking, which only addresses SIFE with respect to the identification of ELL students.

COMMENT:

Declassifying a SIFE student who is performing at or above the transitioning/intermediate level on the annual English language proficiency assessment conflates English language proficiency with literary and math proficiency.

DEPARTMENT RESPONSE:

The Department disagrees. The English language proficiency assessment measures English language proficiency in grade-level reading and writing. As such, a student who performs at the transitioning/intermediate level on the annual English language proficiency assessment will demonstrate grade-level literacy skills. Once a student demonstrates this level of English language development in reading and writing, they do not need the level of supports designed to meet the unique needs of SIFE students.

COMMENT:

Further define how to identify ELL students who are not demonstrating adequate progress, and how it may related to current RTI processes, and what additional supports are required.

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department. In addition, the Department has current guidance related to the RTI process and English Language Learners. See <http://www.p12.nysed.gov/specialed/RTI/guidance/LEPELL.htm>.

SCHOOL DISTRICT ASSURANCES AND REPORTING [154-2.4]

COMMENT:

Support expressed for delineating ELL subpopulations such as Students with Interrupted Formal Education (SIFE) beginner, developing and long-term ELL.

DEPARTMENT RESPONSE:

No response is necessary as the comment is supportive.

COMMENT:

Support this section's provisions and recommend that such submissions be reported out publicly in the interest of transparency and public information. School districts should be required to post their required assurances, plan and report on the district website simultaneously with their submission to the Commissioner, with personally identifiable information on students redacted. We encourage the Department to require districts to create a formal complaint mechanism for parents along with a mechanism to appeal unresolved complaints to the Commissioner.

DEPARTMENT RESPONSE:

The Department will take this recommendation under consideration for a possible future rulemaking.

COMMENT:

Revise annual assurance requirements to require district to ensure that all identified violations have been corrected and compensatory services have been provided, where appropriate. Revise annual plan requirements to require district to provide information on the structure it has put in place to answer questions and investigate complaints. Revise annual report to require information on the number, nature and disposition of complaints in the prior year.

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

Concern was expressed over increased paperwork for reporting on sub-populations, determination of adequate progress, data measurement, completing cumulative averages files, and estimating the following year's programming.

DEPARTMENT RESPONSE:

The collection of this additional information is necessary for both districts and the state to ensure adequate monitoring of ELL student progress, the provision of appropriate programs, and implementation of the provisions of CR Part 154. Without collecting this additional information, the Department will not have adequate information or an accurate picture of the needs of our ELL student population.

COMMENT:

Further define tracking and reporting requirements.

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

MISCELLANEOUS ISSUES

COMMENT:

These proposals will add a major financial burden to school districts at a time when districts are having a very difficult time passing budgets within the State 2% Tax Cap. This is particularly of concern to small school districts.

DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, guidance will be created and released by the Department.

COMMENT:

Small districts may not need translators to the extent required in the proposed rule, since the ELLs may be distributed among many languages rather than having a dominant language, and many parents are able to speak English well and may not need translators. Requiring translations for a multitude of documents to be sent home could have a negative budgetary impact, and requiring written work samples in the native language at intake is logistically challenging.

DEPARTMENT RESPONSE:

With regard to translation services, districts are required to communicate with parents in a language they best understand. These requirements exist in both State and federal law. See, for example, NCLB Title I (<http://www.ed.gov/programs/titleiparta/parentinvguid.doc>).

COMMENT:

Intake testing during the summer could relieve time pressure within first 10 days of school, but potentially increase district's costs if teachers are paid for time during summer.

DEPARTMENT RESPONSE:

Since as early as 1990, the Department's official guidance has stated and led to the common and sound practice of completing the ELL identification process within 10 days. See page six of guidelines for programs under Part 154 for LEP: (<http://www.p12.nysed.gov/biling/docs/GUIDELINESFORPROGRAMSUNDERP154.pdf>) In addition, the Department annually releases guidance to districts on the completion of Part 154 reports, which clearly state that the identification process be completed within

10 school days. See page nine:

http://www.p12.nysed.gov/biling/docs/Part154_Guidance_2013_14.pdf).

COMMENT:

What software system is recommended for tracking progress of our ELLs?

DEPARTMENT RESPONSE:

The Department does not make recommendations regarding software systems for districts to use.

COMMENT:

Revise proposed regulations to require school districts to provide dedicated staff, in numbers proportional to the number of ELL students, to assist in implementing the Part 154 requirements, including answering questions about ELL programs and services and investigating complaints of violations of the Part 154 regulations and failure to deliver services in accordance with the district plan. Recommend that SED identify dedicated staff within each regional office to answer questions and respond to complaints regarding violations of Part 154 requirements that have not been resolved by the local school district. Recommend that the structure, process and reporting requirements for this office be modeled on State special education complaint procedures.

DEPARTMENT RESPONSE:

The Department believes that these matters are best left to discretion of local school districts. In addition, staff at the Department's Office of Bilingual Education and Foreign Language Studies (OBEFLS) offer technical assistance, support, and compliance monitoring in the implementation of Part 154 requirements at the State

level. The eight OBEFLS Regional Bilingual Education Resource Networks (RBERNs) offer regional Part 154 planning and program implementation support.

NYSESLAT

COMMENT:

Flexibility should be provided to students who enter the program within 30 days of NYSESLAT administration. Extend exemption from ELA for ESL students to 2 years from time of arrival in U.S.

DEPARTMENT RESPONSE:

The Department submitted a request to the federal government proposing a new approach that will exempt a subgroup of ELL students from taking the English Language Arts assessment, either because they are newly arrived or because they can demonstrate language arts knowledge and skills on a Native Language Arts assessment. Specifically, the Department applied for a waiver to exempt newly arrived ELLs from participating in the ELA assessments for two years. To date, the waiver request is still pending with the United States Department of Education.

COMMENT:

The NYSESLAT is too long for early elementary students, and tests their ability to sit and focus in English for an extended period of time, rather than assess their English proficiency. Young students cannot complete the reading sections in a reasonable amount of time. Suggest that all early elementary students be allowed to take breaks during test.

DEPARTMENT RESPONSE:

All of the NYSESLAT testing procedures have been developed with substantial input from the Bilingual/ESL teachers of students in the tested grades. Formal breaks have been incorporated into the testing instructions for some test sessions in the early grades, K, 1, and 2. These formal breaks were recommended by teachers who advised they would be advantageous for students. All sessions of NYSESLAT for all grades are untimed. The proctor, usually a Bilingual/ESL teacher, sets the pace at which the test stimuli are presented to the students. During any session, the proctor is permitted to provide a break if it appears that students need one. In addition, testing accommodations for students with disabilities, such as breaks at specified intervals, must be provided whenever indicated in the student's IEP or 504 Plan.