

SED Solicitation of Feedback on Potential Recommendations to Board of Regents Regarding Changes to Part 154 Regulations Pertaining to Services to English Language Learners (ELLs)

As part of an effort to improve instruction and programming for ELLs to ensure stronger outcomes for ELLs, the Department has engaged in a process to review Commissioner's Regulation Part 154 and related regulations in order to strengthen and enhance them. The process began in early 2012 with focus group discussions with 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 ELLs. The Department then used the survey results and the focus group discussions to develop proposed policy changes and enhancements. Proposed changes were also shared with the United States Department of Justice Office of Civil Rights, United States Department of Education staff responsible for Title I and Title III, and members of the Board of Regents for review and feedback. The resulting recommendations are presented below.

The Department is seeking feedback on the following proposed changes to Part 154 (and other related or impacted regulations) for submission to the Board of Regents for its consideration. The Department is sharing this document with all who participated in the Department's aforementioned focus group discussions held in the spring of 2012. Once we receive and incorporate feedback from focus group participants, we will present these recommendations to the Board of Regents. If the recommendations are approved by the Board, the Department will develop proposed amendments to Commissioner's Regulations for consideration by the Board of Regents this Fall, a process which will include a public comment period on the proposed regulations.

If the Regents adopt the regulatory amendments, the Department anticipates that the new regulations will be phased in beginning with the 2014-15 school year. If new regulations are adopted by the Regents, the Department will develop additional guidance documents that will provide more details to assist districts and schools in implementation of these new policies and practices.

The intent of this document is to provide a broad overview of the potential recommendations being considered by the Department that will guide the development of its submission to the Board of Regents this year.

Identification and Placement

Proposed changes in this area address feedback from stakeholder groups and the field that the identification process needs to:

- be rationalized, individualized, and conducted by appropriately qualified personnel;

- provide more opportunity for school staff to obtain a rich understanding of a student's language proficiency or language and cultural needs in both his or her home language and in English;
- take place within a timeframe that is conducive to programming and placement decisions;
- have a mechanism to correct misidentification; and
- identify ELL subgroups (such as Students with Interrupted Formal Education Skills and New Immigrant Students) so that they receive appropriate services.

The Department is considering the following proposed changes to address these concerns:

1. Use a four step identification process that would require:
 - a home language questionnaire;
 - a review of student work and an oral interview by qualified persons in English and the home language, unless clearly unfeasible;
 - consultation with the Committee on Special Education, if applicable; and;
 - the administration of a statewide language proficiency identification assessment.

Only qualified persons will administer the identification process. Qualified persons will be defined as either an ESL or a bilingual teacher, or a teacher who has been trained in cultural competency, language development, and the needs of English Language Learners. Qualified persons must either be proficient in the home language of the student/parent or use a qualified interpreter (oral) /translator (written) of the language and mode of communication the parent or person in parental relation best understands.

2. Require the qualified professionals responsible for making the determination of whether a student is an English Language Learner to engage in appropriate consultation with the Committee on Special Education (CSE) for students who have or are suspected of having a disability. Students with disabilities who take the regular New York State assessments will also take the statewide language proficiency identification assessment. The CSE must determine individually whether a student with a severe disability who is eligible to take the New York State Alternate Assessment (NYSAA) will participate in the regular statewide language proficiency identification assessment. If not, the CSE must identify appropriate alternate assessment measures to be used to determine the student's language proficiency.
3. Use the identification process to determine if a student has Interrupted Formal Education Skills, so that schools and districts can provide targeted interventions to such students and track their needs. Students with Interrupted Formal Education Skills shall mean English Language Learners who upon initial enrollment in school have been in the United States for one

year or less and 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.

4. Mandate that the identification process start no later than the date of initial enrollment, except that the NYSITELL may be administered no earlier than July 15th for students who enroll in school during the summer. Mandate that both the identification process and the process to allow parents or persons in parental relation to choose a program be completed such that the student is placed in a program within 15 school days of the beginning of the identification process.
5. Require that districts use a reentry process to determine whether students who reenter the New York public school system after an absence of two or more school years should continue to be identified as an ELL, taking into consideration schooling in English and/or in their home language during the students' absence from the New York public school system.
6. Allow for the review of an initial identification within the first ninety (90) days of school, if requested in writing by the teacher with the agreement of the parent or person in parental relation, the parent or person in parental relation, or a pupil who is 18 or older. Such review would address those students who may have been improperly identified as an ELL or, conversely, were improperly identified as English proficient, upon enrollment, or who may have English language development needs that were not properly captured during the initial enrollment process.

The review process must be conducted by qualified personnel, as defined above in the initial identification process (recommendation #1); completed within 30 days; and include a school-based assessment of the student's reading, writing, listening and speaking abilities in both English and the home language and consultation with the parent or person in parental relation.

An official change in a student's language proficiency status must be based upon a final recommendation by qualified personnel after review and be submitted by the principal to the superintendent or his or her designee for approval.

If a change in the student's language proficiency status is officially made, the superintendent shall direct the principal to review the status of the student no less than six months and no more than one year following the change. If upon review, the principal believes that the change has affected adversely the student's academic progress, the school must use the identification process to make a new determination regarding the student's ELL status.

7. Consider seeking authority to develop a process to identify ELLs in preschool and to develop separate regulations regarding the identification, placement,

and programming requirements for ELLs in preschool. (Note: development of these regulations would begin following adoption by the Regents of revised Part 154 regulations.)

8. Require that districts maintain records of parent or persons in parental relations' preferred language or mode of communication, as indicated on the Home Language Questionnaire. Such information shall be included in the student record. All subsequent communications with the parent or person in parental relation must be conducted by a qualified interpreter (oral)/translator (written) in the language or mode of communication indicated in the Home Language Questionnaire.
9. Require that districts maintain all documents related to initial identification, including the home language questionnaire, exam results, and any other records generated as part of the identification process in the student record.

Exit Criteria:

Proposed changes in this area address feedback from stakeholder groups and the field that current exit criteria:

- do not allow students who have demonstrated proficiency through the ELA exams to exit ELL status; and
- do not address students with disabilities who may not be able to test out of ELL status based on the NYSESLAT exam due to their disability.

The Department is considering the following proposed changes to address these concerns:

10. As is done in almost all other states, subject to the approval of the United States Department of Education through its accountability workbook amendment process, create additional paths to determine that a student is proficient¹, including:
 - a. scoring proficient on the NYSESLAT or scoring advanced (the level below proficient) in all sections of the NYSESLAT while also scoring proficient on a 3-8 ELA assessment for two consecutive years or scoring advanced in all sections of the NYSESLAT while also scoring 75 or higher on the ELA Regents.
 - b. In the case of an ELL with disabilities, create a process for the CSE to consider whether a student should continue to be designated as an ELL and make recommendations for a final determination of ELL status to be

¹ In the event that the Regents adopt the Bilingual Common Core Progressions (BCCP), the levels of English language proficiency in NYS will change from Beginning, Intermediate, Advanced and Proficient to Entering, Emerging, Transitioning, Expanding and Commanding.

made by the superintendent or his or her designee. The district must include in the CSE meeting an individual with knowledge or special expertise regarding the student's language development needs, such as a regular or special education teacher or related service provider who is appropriately qualified to provide ESL or bilingual instruction or related services.

11. Create a process to declassify an ELL as a Student with Interrupted Formal Education Skills when such student is performing at the advanced or proficient level on the NYSESLAT and/or is performing at grade level in ELA and Math. Such student will remain an ELL until meeting the exit criteria described above. Upon declassification from SIFES status, school districts must maintain records of students once identified as a SIFES.

Parent Information and Choice:

Proposed changes in this area address feedback from stakeholder groups and the field that parents:

- need more information about program options;
- need more program choices for their child; and
- need more information about their child's progress with regard to English language proficiency.

The Department is considering the following proposed changes to address these concerns:

12. Require that districts provide to parents or persons in parental relation of an ELL who is a new entrant both a high quality orientation session on the state standards, assessments and school expectations for ELLs and also the program goals and requirements for Bilingual and Freestanding English as a Second Language programs. The orientation shall be conducted in the language and mode of communication the parent or person in parental relations best understands. A student shall not be withheld from timely program placement if a parent or person in parental relation does not attend an orientation session.
13. Require that districts provide detailed information and choice about either English as a Second Language or Bilingual Education programs to parents or persons in parental relation when their child is identified as an ELL, as well as the options to transfer to another school if the program of their choice is not available in their child's school, as is required by current regulations. If a parent or person in parental relation does not make a timely choice, i.e., within ten days of the parent being notified, a student will be placed in a Bilingual Education program if there is one in the school that serves the grade and home language of the child. If a Bilingual Education program does not exist, then the student must be placed in an English as a Second Language program. The information shall be provided in

the language and mode of communication the parent or person in parental relation best understands. Transportation must be provided to students who transfer to another school consistent with State law and the district's transportation policies.

14. Require that districts provide written notice of identification process results, orientation session dates, and program options to parents or persons in parental relation of an ELL in a language or mode of communication the parent or person in parental relations best understands. Require that parents or persons in parental relations sign a written consent form indicating their participation in the orientation session and their program choice. Require that districts maintain records of notice, orientation session agendas and sign ins, and signed consent forms as part of the student record. In the event that a parent does not make a timely choice as indicated above in #12, such information shall be recorded by the district and maintained as part of the student record.
15. Require that *in addition* to parent-teacher conferences, quarterly progress meetings or other such scheduled meetings provided to all students, school staff meet with parents or persons in parental relation to ELLs at least once a year to discuss their child's language development progress and needs and NYSESLAT results. The district must take whatever action is necessary to ensure that the parent or person in parental relation understands the proceedings of the meeting, including using a qualified interpreter (oral) /translator (written) for the language and mode of communication the parent or person in parental relation best understands.

Types of Programs and Instruction

Proposed changes in this area address feedback from stakeholder groups and the field that current regulations:

- need to provide more access to bilingual programming;
- need to provide for more flexibility in scheduling services for students, especially at the high school level, to permit integration of language development and subject area content instruction;
- need to support students' home language development when there are insufficient students or staff to support a full bilingual program;
- need to provide greater clarity regarding how bilingual programs should be defined; and
- need to ensure that ELLs have the means for timely accumulation of the credits required for high school graduation.

The Department is considering the following proposed changes to address these concerns:

16. Define a Freestanding English as a Second Language program as a research-based program comprised of two components: a content area instructional component in English with appropriate scaffolds and supports (including all core content, such as English language arts, math, science, social studies), and an explicit English language development component (Stand-alone and/or Integrated English as a Second Language instruction).
17. Define Stand-alone English as a Second Language as a unit of study or its equivalent in which pupils receive instruction in order to acquire the English language needed for success in academic content courses. Stand-alone ESL may be provided through self-contained or pull-out instruction, except as required by a student's individualized education program (IEP); however pupils shall not be pulled out of core content area courses in order to receive a Stand-alone English as a Second Language unit of study.
18. Define Integrated English as a Second Language as a unit of study or its equivalent in which students receive content area and explicit English language development instruction from qualified personnel. Qualified personnel for Integrated English as a Second Language instruction shall mean a dually certified teacher (e.g., ESL *and* content area) or co-teaching by a certified ESL teacher and certified content area teacher.
19. Define a Bilingual Education program as a research-based program comprised of two components: a bilingual content area instructional component (including native language arts content and at least one other bilingual core content, e.g., math, science, social studies) and an English language development component.
20. Define Native Language Arts² as a unit of Language Arts instruction in the pupil's home language. Such instruction shall be aligned to the English Language Arts curriculum of the school district and shall focus on literacy development in the home language.
21. Require districts to annually estimate, at a date prior to the beginning of the school year as specified by the Commissioner, the number of ELLs by school, grade and home language who are expected to be enrolled the following school year as well as the number of ELLs by grade and home language who are expected to be enrolled in the district.
22. Based on the Annual Estimate of ELLs by school, grade and home language, require districts to offer bilingual programs based on both a threshold number (20) of students in a school who speak the same home language and are in the

² In the event that the Regents adopt the Bilingual Common Core Progressions (BCCP), Native Language Arts will be changed to Home Language Arts.

same grade, as well as a threshold number (20) of students in a district who speak the same home language and are in the same grade.

23. Require districts to place, to the extent practicable, any new bilingual programs triggered by the district threshold requirement in a School in Good Standing, if such school exists in the district. (In New York City, “district” refers to the community school district.) Where such school does not exist, the bilingual program shall, to the extent practicable, be placed in a Focus School. In this situation and/or where it is not practicable to place a new program in a School in Good Standing (such as lack of physical space in the School in Good Standing), the district must submit a justification and receive the approval of the Commissioner to place the program in a Focus or, in rare cases, a Priority School. In the rare case where a Priority School is the only option for placement of a new bilingual program, parents in New York City shall be given the option to transfer their child to a bilingual program in a School in Good Standing in a neighboring community school district.

24. Allow districts a one-year temporary variance from offering the requisite number of bilingual programs if: (1) the district does not have qualified staff to operate a bilingual education program for all eligible students at either the district level or at one or more schools that are required to offer a bilingual program; (2) the district overestimated the number of English Language Learners who would be enrolled in the district or a school; or the program would result in class sizes that are significantly below the district class size average for that grade and course.

To receive a one-year variance, the district must demonstrate good faith efforts to recruit qualified bilingual teachers or evidence regarding class size averages and must submit a plan for how the district will provide alternate home language supports in the form of bilingual teacher assistants/aides, heritage language programs or other home language supports approved by the Commissioner, and make such home language supports available for all pupils who would otherwise be enrolled in a bilingual program.

25. Give the Commissioner the authority to direct districts to establish bilingual programs if the district has a persistent pattern of denying students access to bilingual programs through underestimation of the number of ELLs on the Annual Estimate, described in #21.

26. Require units of study for students in ESL programs be as follows for the 2014-15 school year:

Free Standing ESL K-8 (2014-15)³

	Required Units of Stand Alone ESL	Required Units of Integrated ESL	Required Units that May Be <i>Either Stand Alone or Integrated</i> ESL
Beginner	1	1 (with ELA)	
Intermediate		1 (with ELA)	1
Advanced		1 (with ELA or another content area)	
Proficient (i.e., one year following exit from ELL status)		1 (with ELA or another content area) (or other transition services)	

Free Standing ESL 9-12 (2014-15)

	Required Units of Stand Alone ESL	Required Units of Integrated ESL	Required Units that May Be <i>Either Stand Alone or Integrated</i> ESL
Beginner	1	1 (with ELA or another content area)	1
Intermediate		1 (with ELA or another content area)	1
Advanced		1 (with ELA or another content area)	
Proficient (i.e., one year following exit from ELL status)		1 (with ELA or another content area) (or other transition services)	

³ In the event that the Regents adopt the Bilingual Common Core Progressions (BCCP), which are based on five levels of language development, reference to Beginning shall mean Entering, Intermediate shall mean Emerging, Transitioning is a new level that shall have the same ESL unit requirements as the former Intermediate, Advanced shall mean Expanding and Proficient shall mean Commanding.

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27. Require that units of study in ESL programs for the 2015-16 school year and beyond be as follows⁴:

Free Standing ESL K-8 (2015-16)⁵

	Required Units of Stand Alone ESL	Required Units of Integrated ESL
Beginner	1	1 (with ELA)
Intermediate		2 (with ELA)
Advanced		1 (with ELA or another content area)
Proficient (i.e. one year following exit from ELL status)		1 (with ELA or another content area)(or other transition services)

Free Standing ESL 9-12 (2015-16)

	Required Units of Stand Alone ESL	Required Units of Integrated ESL
Beginner	1	2 (with ELA and with another content area)
Intermediate		2 (with ELA and with another content area)
Advanced		1 (with ELA or another content area)
Proficient (i.e., one year following exit from ELL status)		1 (with ELA or another content area)(or other transition services)

⁴ Such approach is aligned to the Theoretical Foundations of the Bilingual Common Core Initiative (available at <http://engageny.org/sites/default/files/resource/attachments/nysbccci-theoretical-foundations.pdf>) and would be done in conjunction with recommendations 38, 39 and 40, which would require additional training for prospective teachers and professional development for current teachers, with a focus on best practices for co-teacher strategies an integrating language and content instruction.

⁵ In the event that the Regents adopt the Bilingual Common Core Progressions (BCCP), which are based on five levels of language development, reference to Beginning shall mean Entering, Intermediate shall mean Emerging, Transitioning is a new level that shall have the same ESL unit requirements as the former Intermediate, Advanced shall mean Expanding, and Proficient shall mean Commanding.

28. Require that students in bilingual programs K-12 receive the same ESL units as defined above, two units of study or its equivalent in Language Arts, one in English and one in the student's home language, and, at a minimum, one other content area that is provided through bilingual instruction.
29. Limit the grade span for K-8 bilingual or ESL programs to two contiguous grades, and, for 9-12 programs, allow districts to determine maximum grade span.
30. Allow English as a Second Language instruction to be provided in both Stand-alone and Integrated settings. In the case of Integrated ESL, require that such courses be taught by either a dually certified (ESL *and* content area) teacher or co-taught by an ESL and a content area teacher.
31. Allow students to accumulate credit for Integrated ESL in the content area of integration and for Stand-alone ESL to receive an elective credit, and allow students to accumulate credit for ELA through a combination of English Language Arts and Native Language Arts,⁶ if students are in a bilingual program. ELL students will need to earn the same total number of credits and meet the same credit distribution requirements as all other students to earn diplomas.

Support Services and Transitional Services

Proposed changes in this area address feedback from stakeholder groups and the field that:

- student progress needs to be monitored and additional supports provided when needed;
- districts need to ensure that students are not given the same services year after year if they are making limited or no progress in their language development; and
- the regulations need to clearly define the requirements for transitional services, and districts need to ensure that students receive these services.

The Department is considering the following proposed changes to address these concerns:

32. Require that districts annually identify students not making adequate language and/or academic progress and require that the school take into account multiple sources of data and information about the student to determine appropriate

⁶ In the event that the Regents adopt the Bilingual Common Core Progressions (BCCP), Native Language Arts will be changed to Home Language Arts.

support required, including both academic and social/emotional supports, as needed.

33. Require that any academic support services offered be aligned to the district's and school's Academic Intervention Services and/or Response to Intervention plans.

34. Require that districts continue to provide at least one unit of Integrated ESL instruction, or other services as approved by the Commissioner, to a student for one school year after that student exits ELL status.

Graduation Requirements

Proposed changes in this area address feedback from stakeholder groups and the field that:

- current graduation requirements are difficult for ELLs to meet, given that the level of language acquisition needed for students often takes more than four years to develop.

The Department is considering the following proposed changes to address these concerns:

35. Change graduation requirements to allow multiple pathways, only for ELLs who enter the United States as new arrivals in 9th grade or above, including:
- Scoring 65⁷ or higher on all Regents except the ELA,⁸ and passing a rigorous exam of English proficiency such as the TOEFL, that has been approved as an alternative to the Regents examination, to receive a Regents diploma.

⁷ References to scoring 65 or higher or scoring between 55-64 will need to be revised to reflect any new scales developed in conjunction with implementation of Common Core aligned Regents examinations.

⁸ Translations are available on all required Regents exams except the English Language Arts Regents where no translations are allowed and no alternate Native Language Arts Regents exam currently exist. Thus the alternate pathways provided herein relate only to ELA Regents exams with the expectations that with translations made available, ELLs should still be able to demonstrate proficiency on the other required Regents exams and would not be unfairly prohibited from demonstrating proficiency on such exams due to their level of English language acquisition.

Certification and In-Service Professional Development

Proposed changes in this area address feedback from stakeholder groups and the field that:

- non-ESL and bilingual teachers need to receive training and professional development on the needs of ELLs to provide effective instruction;
- ESL and bilingual teachers each require additional professional development in language acquisition and scaffolds and techniques to support ELLs; and
- bilingual teachers and bilingual teacher assistants are often the first to be excessed because they do not have tenure tracks, despite ongoing shortages of teachers in these fields.

The Department is considering the following proposed changes to address these concerns:

36. Create certification areas for bilingual teaching assistants and tenure areas for bilingual teaching assistants and bilingual teachers.
37. Require all prospective teachers to complete coursework on ELL instructional needs, cultural competency, and language acquisition processes in order to receive initial certification.
38. Require that at least 15% of professional development hours for all teachers and administrators be devoted specifically to the needs of ELLs and language acquisition, including a focus on best practices for co-teacher strategies and integrating language with content instruction.
39. Require that at least 50% of professional development hours for all ESL and bilingual teachers be devoted specifically to the needs of ELLs and language acquisition and the integration of language and content area instruction, including a focus on best practices for co-teacher strategies and integrating language with content instruction.

District Planning and Reporting Requirements

Proposed changes in this area address feedback from stakeholder groups and the field that districts:

- need to provide sufficient information about subpopulations, programming offered or programs by languages and/or subpopulations of ELLs; and
- should be required to sign assurances that programs and services are provided.

The Department is considering the following proposed changes to address these concerns:

40. Require that districts annually submit a comprehensive plan for serving ELLs by a date established by the Commissioner.
41. Require districts to provide additional information in reports and plans regarding programs for subpopulations of ELLs (i.e., Long-Term ELLs, new immigrant students, ELLs with disabilities and Students with Interrupted Formal Education Skills), including program information by subpopulations and the home languages spoken in the district.
42. Require districts to submit annual assurances that programs and services are provided as required by Part 154, that teachers receive training and professional development as required by Part 154, that parents and persons in parental relation are able to make informed choices, and that ELLs are given equal opportunity to participate in district programs and extracurricular activities.
43. Require districts to include plans to inform parents and persons in parental relation of the ELL status of their children and provide them with program choice; annually measure and track the academic progress of ELLs; and identify, annually assess, and exit students from ELL status, including procedures specific to subpopulations of ELLs.

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