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PART 154

SERVICES FOR PUPILS WITH LIMITED ENGLISH PROFICIENCY

(Last approved modification was made on July 2007)

154.1 Scope of Part.

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

154.2 Definitions.

- (a) *Pupils with limited English proficiency* shall mean pupils who by reason of foreign birth or ancestry, speak a language other than English, and
- (1) either understand and speak little or no English; or

(2) score below a state designated level of proficiency, on the Language Assessment Battery-Revised (LAB-R) or the New York State English as a Second Language Achievement Test (NYSESLAT); provided, however, that no pupil shall be served in a bilingual or English as a second language education program pursuant to this Part for a period in excess of three years from the date of enrollment in school unless such period is extended by the commissioner with respect to an individual pupil in accordance with the provisions of subdivision 2 of section 3204 of the Education Law.

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

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

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

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

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

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

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

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

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

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

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

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

(e) For grades kindergarten through twelve, *bilingual education program* shall mean a program of instruction composed of two components: a language arts instructional component, and a content area instructional component. Such instruction shall take into account the first language and culture of such pupils.

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

grade level and English language skills. The time requirements for ESL instruction within a bilingual education program shall be the same as those established for the ESL instruction within a free-standing ESL program, as prescribed in subdivision (d) of this section.

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

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

(f) *Exception.* A school district, which is subject to a court order or is a party to a preexisting agreement with an appropriate Federal agency requiring programs substantially equivalent to or in excess of those required under these regulations, will not be required to comply with these regulations and will be in compliance with this Part as long as the district implements the court order or agreement and fulfills all other requirements of this Part which are not addressed by such court order or agreement.

154.3 School District Responsibility

The provisions of this section shall apply to programs operated in the 2007-08 school year and thereafter. All limited English proficient students shall be entitled to receive services in accordance with subdivision 2 and 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. 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;

(2) administrative practices and procedures to:

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

(ii) identify such pupils with limited English proficiency;

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

(3) 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;

(4) a description of the criteria used by the district to place limited English proficient pupils 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;

(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 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, 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 are adhered to.

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

(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, including guidance programs pursuant to section 100.2(j) of this Title;

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

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

(iv) that the minimum ESL, ELA and NLA requirements prescribed in section 154.2(e) of this Part 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) the district will comply with the requirements of this Part and the provisions of the Education Law governing programs for pupils with limited English proficiency;

(vii) that programs for limited English proficient pupils 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 identified as being limited English proficient 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 served in the preceding year, including their grade level, native language and instructional program;

(4) a report by building of the number of pupils 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;

(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, 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 of the same grade level assigned to a building, all of whom have the same native language which is other than English, shall provide such pupils with bilingual education programs.

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

(h) *Support services.* Each school district with limited English proficient pupils participating in bilingual or free-standing English as a second language programs shall provide appropriate support services needed by such pupils to achieve and maintain a

satisfactory level of academic performance. Such services may include, but need not be limited to, individual counseling, group counseling, home visits, and parental counseling. Where appropriate, such services shall be provided in the first language of the pupil and the pupil's parents or other persons in parental relation to the pupil.

(i) *Transitional services.* Each school district shall ensure a transition for former limited English proficient pupils transferring from a bilingual or free-standing English as a second language program into an English mainstream program. Transitional services shall be provided for the first year after the pupil is placed in the English mainstream instructional program.

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

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

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

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

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

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

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

(l) A pupil whose score on the LAB-R or the NYSESLAT, as specified in section 154.2(a),(b) and (c) of this Part, is a result of a disability shall be provided special education programs and services in accordance with the individualized education program (IEP) developed for such pupil pursuant to Part 200 of this Title, and shall also be eligible for services pursuant to this Part when such services are recommended in the IEP. A pupil with a disability receiving services in accordance with the provisions of this section shall be counted as a pupil with limited English proficiency, as well as a student with a disability, for purposes of calculating State aid pursuant to section 3602 of the Education Law.