



New York State Education Department
Bilingual Education Toolkit

Policy and Regulations

Topic Brief # 1



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The Office of Bilingual Education and World Languages (OBEWL), with the support of our Regional Bilingual Education Resource Network (RBERNS), the ELL Leadership Council, and the Bilingual Education Advisory Panel, has prepared this series of related topic briefs that will comprise a Bilingual Education Toolkit to assist established and newly created bilingual programs in understanding the history, programming, theory, and pedagogy inherent in building effective bilingual education programs. The OBEWL presents this and other topic briefs as part of its continuing mission of promoting bilingual education and bilingualism as assets to both schools and students.

Introduction and Purposes

There are currently more than 240,000 English Language Learners (ELLs) identified in New York State (2022).

The Bilingual Education Toolkit was created by the Office of Bilingual Education and World Languages (OBEWL) and multiple experts in the field of Bilingual Education throughout New York State. The information provided in this Toolkit is designed for any stakeholder working on the creation and implementation of a Bilingual Education program, including district and school administrators, teachers and coordinators of various bilingual program models, English as a New Language (ENL) teachers, bilingual special education teachers, and all teachers of ELLs. Bilingual Education is a key instrument in ensuring that the civil rights of ELLs to receive a full public education are met. The objective of this document is to ensure Bilingual Education Services provided to ELLs comply with federal, state, and NYSED Bilingual Education requirements per CR-Part 154, in addition to providing ELLs with rigorous and equitable instruction.

The goal of Bilingual Programs in New York State is to graduate individuals who are bilingual, biliterate and bicultural in English and their home language. New York believes in leveraging the home languages of our ELLs. Treating home language(s) as an asset to be developed while students are also learning English is an inherently culturally responsive and sustaining practice that affirms the individual and leads to high expectations and rigorous instruction. Additionally, incorporating the use of these languages in instruction enhances the cultural responsiveness of our classrooms and schools, and advantageously positions New York State as it graduates individuals ready to tackle a global workforce.

Our mission is to ensure that all New York State English Language Learners (ELLs) attain the highest level of academic success and that all Multilingual Learners (MLs) – which include ELLs, Former/Ever ELLs, World Languages students, and heritage speakers of World Languages – achieve the highest level of language proficiency in English and in one or more other languages. Our Vision is to provide leadership that embraces linguistically diverse learners to establish a Multilingual Society.

History of Bilingual Education Legislation

Since the early 1970s, the New York State Education Department (NYSED) has worked in collaboration with the New York State (NYS) legislature to create a statutory, regulatory, policy, and budgetary structure to assist schools and districts to initiate, sustain, and expand educational programs that promote equitable educational opportunities for English Language Learners (ELLs) and Multilingual Learners (MLs). Federal legislation and court decisions have helped to define and clarify the educational responsibility for ELLs and provide a framework for local initiatives. These landmark decisions and policies on the national level have helped shape the scope, nature and role of educational programs for ELLs and MLs in NYS to meet the multi-dimensional demands of this heterogeneous, growing population.

The following timeline shows a brief summary of some highlights in the establishment and maintenance of Bilingual Education in New York State (Carasquillo, Rodriguez & Kaplan, 2014).

- ▶ **1968** - Federal Bilingual Education Act of the Elementary/Secondary Education Act (ESEA) of 1968 enacted. Provided categorical funds for students who were economically disadvantaged and came from homes where English was not the dominant language.
- ▶ **1969** - Bilingual Education Unit of NYSED created.

Tasked with developing policies for educating ELLs and to provide technical assistance to schools. The current iteration of this function, among many other expanded responsibilities, is discharged by the Office of Bilingual Education and World Languages.

- ▶ **1970** - New York State Education Law s.3204(2) amended.
The amendment allowed school districts to provide bilingual instruction to ensure students advanced academically while working toward English language proficiency. Bilingual categorical funding was included as part of this amendment.
- ▶ **1972** - *The NYS Regents Position Paper on Bilingual Education* published.
Recognized that the language skills and experiences of ELLs were an untapped resource. For the first time, the New York State Board of Regents officially confirmed support for programs that capitalize on students' home language ability and recognized the role of the home language.
- ▶ **1974** - *Lau v. Nichols*
The United States Supreme Court established the right of ELLs to have "a meaningful opportunity to participate in the educational program." Federal court in San Francisco unanimously ruled that non-English speaking students were not provided with equal educational opportunities when they were instructed in a language they could not understand. Providing resources such as equivalent textbooks, quality of teachers and curriculum was not alone considered equal treatment under the law. Effective learning could not occur if provision was not also made for the different language experiences of these students, particularly if they did not have access to their primary language of understanding - their home language. The court effectively indicated that unequal treatment was a violation of the Civil Rights Act of 1964.
- ▶ **1974** - *ASPIRA Consent Decree*
Established the right of New York City school students with limited English proficiency to receive Bilingual Education as a legally enforceable entitlement. The agreement required that the bilingual program include mathematics, science, social studies in Spanish, reading comprehension instruction in Spanish as well as intensive instruction in English as a Second Language (ESL).
- ▶ **1981** - Commissioner's Regulations Part 154 enacted.
New York State Regulations outlining the requirements for identification, placement and minimum services for ELLs CR Part 154 sets educational standards for districts enrolling ELLs to assure that they are provided opportunities to achieve the same educational goals as the general student population.
- ▶ **1982** - *Plyler v. Doe*
The US Supreme court ruled that it is a violation of the Equal Protection Clause of the Fourteenth Amendment of the Constitution to deny undocumented children a public school education.
- ▶ **1984** - NYSED funded Two-Way Bilingual Education Programs
Language Programming Competitive grants for school districts to develop and implement Two-Way Bilingual Education programs to provide instruction to ELLs and native speakers of English in two languages (English and the ELLs home language).

- ▶ **1990** - CR Part 154 amended
CR Part 154 amended to reflect the Board of Regents 1988 Policy Paper for Bilingual Education. The amendments included provisions holding all schools accountable for identifying and serving ELLs.
- ▶ **2001** - No Child Left Behind (NCLB)
NCLB introduced significant changes in the curriculum of public primary and secondary schools in the United States and dramatically increased federal regulation of state school systems; it required academic rigor in ELL education.
- ▶ **2003** - New York State English as a Second Language Achievement Test (NYSESLAT) administered
The NYSESLAT was implemented across the State to ensure that the yearly progress of ELLs was measured using the same criteria.
- ▶ **2012** - New York State Seal of Biliteracy signed by Governor Cuomo
Recognizes high school graduates who have attained a high level of proficiency in one or more languages in addition to English.
- ▶ **2014** - CR Part 154 Amended
Strengthened programmatic requirements for Bilingual Education and English as a New Language program, and parent notification requirements.
- ▶ **2015** – Every Student Succeeds Act (ESSA)
Emphasized content learning of ELLs and supported use of home languages. ESSA gives states more of a say in how schools account for student achievement. This includes the achievement of disadvantaged students.

CR Part 154 Overview

In 1981, the New York State Board of Regents approved Commissioner’s Regulations (CR) Part 154 for pupils with limited English proficiency, now referred to as ELLs. CR Part 154 has been amended over the years to meet the changing needs of ELLs and to address the requirements of state and federal education law. CR Part 154 is the authoritative document that outlines the necessary components of a viable education program for ELLs, addressing such areas as identification, placement, assessment, programmatic requirements, planning, recordkeeping and reporting, assurances, and parent involvement. Education Law 3204 states that districts receiving Foundation Aid must comply with the State law and standards set forth in Part 154 of the Commissioner’s Regulations.

The amendments to CR Part 154 currently in effect were adopted at the September, October and November 2014 Board of Regents meetings. Subparts 154-2 and 154-3 describe identification, program, service and exit requirements for ELLs with which school districts must comply, effective as of the 2015-2016 school year and thereafter.

- ***CR Part 154-2: Student Identification and Program Selection***

The processes for screening and identifying ELLs in New York State are defined in CR Part 154-2.3(a) *Initial and Reentry Process and Determination of English Proficiency*. The regulation outlines the steps that must be taken to

determine if a student is an ELL, the timeline for doing so and parental notification requirements. While the identification is conducted, potential ELL students are provisionally placed in either a Bilingual Education (BE) or an English as a New Language (ENL) program until their status is determined. Detailed information regarding the CR Part 154 identification and placement, including a flowchart for following the identification process, as well as guidance for administering the Home Language Questionnaire and individual interview. More details can be found on the department’s website at: <http://www.nysed.gov/bilingual-ed/ell-identification-placementhome-language-questionnaire>.

Parents or persons in parental relation (hereinafter referred to as “parent”) are an integral part of the ELL identification and program placement process. After a student is identified as an ELL, parents must be provided with a high-quality orientation session in their preferred language or mode of communication prior to an ELLs final program placement. The session must include information clearly outlining the goals, and requirements of Bilingual Education and English as a New Language program, state learning standards, assessments and expectations. The orientation should give parents enough unbiased information so that they are able to make informed decisions regarding their child’s education.

Under CR Part 154, Bilingual Education is the default program placement, however, the regulation provides an opportunity for parents of identified ELLs to select the program in which they would like their children to be placed. At the orientation described above, parents are also informed that they have the right to transfer into a Bilingual Education program at another school in the district if their designated school does not have one. By default, the children of parents who do not make a selection will be placed in a Bilingual Education program where available. If a BE program does not exist at the enrollee’s school district, the student will be served in an English as a New Language program.

Parent Guides for ELLs/ELLs can also be found on the department’s website at: <http://www.nysed.gov/bilingual-ed/guide-parents-english-language-learnersmultilingual-learners-new-york-state>

CR Part 154-2 (K-8) Transitional Bilingual Education Program

ENGLISH PROFICIENCY LEVEL	ENTERING (Beginning)	EMERGING (Low Intermediate)	TRANSITIONING (Intermediate)	EXPANDING (Advanced)	COMMANDING (Proficient)	
LANGUAGE ARTS	STAND-ALONE ENL	1 unit of study in ENL (180 min.)	.5 unit of study in ENL (90 min.)			
	INTEGRATED ENL / ELA	1 unit of study in ENL/ELA (180 min.)	1 unit of study in ENL/ELA (180 min.)	.5 unit of study in ENL/ELA (90 min.)	1 unit of study in ENL/ELA or other Core Content Area (180 min.)	
	FLEXIBILITY		.5 unit of study can be STAND-ALONE ENL <i>or</i> INTEGRATED ENL/Core Content Area (90 min.)	.5 unit of study can be STAND-ALONE ENL <i>or</i> INTEGRATED ENL/Core Content Area (90 min.)		.5 unit of study per week of INTEGRATED ENL in ELA/Core Content Area, <i>or</i> other approved Former ELL services for two additional years*
	TOTAL ENL	360 minutes per week	360 minutes per week	180 minutes per week	180 minutes per week	
	HOME LANGUAGE ARTS	1 HLA Class	1 HLA Class	1 HLA Class	1 HLA Class	
BILINGUAL INSTRUCTION	BILINGUAL CONTENT AREA SUBJECTS	Minimum of 2	Minimum of 2	Minimum of 1	Minimum of 1	
STAFFING/ PERSONNEL	K-8 BILINGUAL EDUCATION PROGRAM			K-8 ENGLISH AS A NEW LANGUAGE PROGRAM		
	<ul style="list-style-type: none"> (K-6 Bilingual) Common Branch teacher with a bilingual extension (7-8 Bilingual) Content Area teacher with a bilingual extension. [HLA must be taught by a certified Language Other Than English (LOTE) teacher.] 			<ul style="list-style-type: none"> (K-8 STAND-ALONE) ESOL certified teacher (K-6 ENL) Common Branch K-6 teachers with a bilingual extension can teach the ENL component of a K-6 Bilingual Education program. (7-8 ENL) Integrated ENL can be taught by an ESOL teacher with Content Area certification or two individually certified teachers. 		
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 Education class, as defined by section 200.1(uu) of this Title. All programs must be provided during the school day.						

*Other services that are approved by the NYS Commissioner that monitor and support the student’s language development and academic progress. Content Area shall mean ELA, Math, Science, and Social Studies.

CR Part 154-2 (9-12) Transitional Bilingual Education Program

ENGLISH PROFICIENCY LEVEL	ENTERING (Beginning)	EMERGING (Low Intermediate)	TRANSITIONING (Intermediate)	EXPANDING (Advanced)	COMMANDING (Proficient)	
LANGUAGE ARTS	STAND-ALONE ENL	1 unit of study in ENL (180 min.)	5 unit of study in ENL (90 min.)			Former ELLs must continue to receive services for an additional two years
	INTEGRATED ENL / ELA	1 unit of study in ENL/ELA (180 min.)	1 unit of study in ENL/ELA (180 min.)	5 unit of study in ENL/ELA (90 min.)	1 unit of study in ENL/ELA or other Core Content Area (180 min.)	
	FLEXIBILITY	1 unit of study can be STAND-ALONE ENL instruction or INTEGRATED ENL in Core Content Area (180 min.)	5 unit of study can be STAND-ALONE ENL or INTEGRATED ENL/Core Content Area (90 min.)	5 unit of study can be STAND-ALONE ENL or INTEGRATED ENL/Core Content Area (90 min.)		5 unit of study per week of INTEGRATED ENL in ELA/Core Content Area, or other approved Former ELL services for two additional years*
	TOTAL ENL	540 minutes per week	360 minutes per week	180 minutes per week	180 minutes per week	
	HOME LANGUAGE ARTS	1 HLA Course	1 HLA Course	1 HLA Course	1 HLA Course	
BILINGUAL INSTRUCTION	BILINGUAL CONTENT AREA SUBJECTS	Minimum of 2	Minimum of 2	Minimum of 1	Minimum of 1	
AWARDING CREDITS	STAND-ALONE ENL	Elective credit is awarded upon passing each corresponding STAND-ALONE ENL unit of study		HOME LANGUAGE ARTS	Language Other Than English (LOTE) credit is awarded upon passing each corresponding HLA unit of study	
	INTEGRATED ENL	Core Content area credit is awarded upon passing each corresponding ENL unit of study in ELA, Math, Science, or Social Studies		BILINGUAL CONTENT AREA	Core Content area credit is awarded upon passing each corresponding Bilingual Content Area subject	
STAFFING/ PERSONNEL	BILINGUAL EDUCATION PROGRAM		ENGLISH AS A NEW LANGUAGE PROGRAM			
	<ul style="list-style-type: none"> (9-12) Bilingual Content Area teacher with a bilingual extension. [HLA must be taught by a certified Language Other Than English (LOTE) teacher.] 		<ul style="list-style-type: none"> (9-12) Stand-alone ESOL certified teacher (9-12) Integrated ENL can be taught by an ESOL teacher with Content Area certification or two individually certified teachers. 			
<p>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 Education class, as defined by section 200.1(uu) of this Title. All programs must be provided during the school day.</p> <p>*Other services that are approved by the NYS Commissioner, that monitor and support the student's language development and academic progress.</p> <p>Core Content Area shall mean ELA, Math, Science, and Social Studies</p>						



• **ELLs with Disabilities and CR Part 154**

As per CR Part 154, a student with a disability who has been identified as an English Language Learner, is entitled to placement within a BE program. The need for special education services does not determine the student eligibility for BE or ENL services. The district's policy for ELLs who are students with a disability should be consistent with the requirements outlined in CR Part 154, including the default placement in a BE program. As such, parents are the only determining factor as to whether a student is placed in a BE program should the district have one available. More information pertaining to ELLs with disabilities can be found on our [website](#) and will be addressed in an upcoming Brief.

• **CR Part 154: Program Requirements**

CR Part 154-2.3(d) governs the responsibility of school districts to provide either a Bilingual Education (BE) or English as a New Language (ENL) Program to all ELLs and mandates the conditions under which districts must create BE programs. An ENL program includes core content area instruction in English with home language supports and scaffolds, as well as English language development instruction. A BE program includes an ENL component, as well as bilingual instruction in a minimum of two core content areas and Home Language Arts.

Regarding the creation of BE programs, CR Part 154-2.3(d)(2) stipulates that:

*Each school district in which the 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.

For New York City Department of Education schools only, the ASPIRA Consent Decree allows for a minimum number of ELLs required to open a BE program, that is different than required by CR-154. As per the *NYC Department of Education, English Language Learner Policy and Reference Guide 2018-2019*, a BE program must be provided under the following conditions (UFT, 2020):

- 15 or more ELL students in grades K to 8 who speak the same language in one or two contiguous grades
- 20 or more ELL students in high school who speak the same language in one grade

In order to determine the languages and schools in which to offer BE programs, school districts must conduct an Annual Estimate of Enrollment of English Language Learners by School and Grade. Before the end of each school year, districts must estimate the number and languages spoken of ELLs who are expected to enroll in each school and in each grade in the following school year. [Part 154-2.3(d)(1)] Utilizing this estimate, districts must create and make available BE programs in all home languages spoken by 20 or more ELLs of the same grade and home language districtwide. [Part 154-2.3(d)(2)]. All ELLs within a district, including those who do not choose a BE program, are counted for the purpose of determining whether that district must open a BE program under CR 154-2.3(d)(2) (NYSED, 2016).

Finally, ELLs are entitled to program continuity [CR Part 154-2.3(e)]. Districts must provide ELLs with the same instructional program type in which they were initially enrolled as long as they remain designated as ELL. If the number of students in a Bilingual Education program drops below the twenty (20) student threshold, program continuity applies if there are fifteen (15) students enrolled in a grade in the bilingual program in the district.

* It should also be noted that there is nothing in regulation precluding school districts from implementing a Bilingual Education program before meeting the 20 student minimum threshold described above. Laying the groundwork for a robust Bilingual Education program ahead of time will ensure the district is prepared to meet the needs of students when they arise.

- ***CR Part 154: Provision of Programs***

CR Part 154-2.3(h) outlines required units of study for ENL and BE programs at the K-8 and 9-12 grade levels. As mentioned previously, BE programs include both home language and English as a New Language instruction. The charts below illustrate the required units of study in both the home language and English for BE programs in New York State. CR Part 100 defines one unit of study as at least 180 minutes of instruction per week throughout the school year. The complete text of CR Part 154 and accompanying guidance documents can be found at the following website: <http://www.nysed.gov/bilingual-ed/regulations-concerning-english-language-learnersmultilingual-learners>

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NEW YORK STATE BILINGUAL EDUCATION TOOLKIT

TOPIC BRIEF #1

POLICY AND REGULATIONS

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