

Commissioner's Regulation Part 154

English Language Learners (ELLs) Screening, Identification, Placement, Review, and Exit Criteria

July 1, 2015



INTRODUCTION

In the fall of 2014, the Board of Regents adopted the New York State Education Department's proposed amendments to Part 154 of the Regulations of the Commissioner of Education. The Commissioner's Regulation Part 154 (CR Part 154) establishes the legal requirements for the education of English Language Learners (ELLs) in New York State (NYS).

This document is designed to provide regulatory guidance to screening, identification, placement, review, and exit criteria for English Language Learners (ELLs).

Additional questions?

Please send questions or comments to the Office of Bilingual Education and World Languages.
OBEFLS@nysed.gov

OR

[The Regional Bilingual Education Resource Network \(RBERN\)](#)

The Screening, Identification, and Placement takes place within 10 school days of enrollment.

School districts are required to implement an identification process to determine if a student is an English Language Learner when a student initially enrolls or reenters a New York State (NYS) public school. The identification process must commence no later than the date of the student's initial enrollment or reentry in a NYS district. The process must be completed and a determination made within 10 school days of initial enrollment or reentry into a NYS public school after two years.

For additional information on CR Part 154, see
<http://www.p12.nysed.gov/biling/bilinged/CRPart154.html>

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1. SCREENING

1a. Screening – Home Language Questionnaire (HLQ)

After registration and enrollment in the school, the HLQ is completed by the parent/guardian. However, districts may create their own form for diagnostic assessment of a prospective enrollee's linguistic needs, incorporating all questions on the HLQ, and distribute at any time prior to enrollment. Qualified personnel must be available to determine if a language other than English is spoken at home. Qualified personnel means:

A New York State certified bilingual or English to Speakers of Other Languages (ESOL) teacher who is fluent in the home language of the student and parent/guardian or uses a qualified interpreter/translator of the language or mode of communication the student and parent/guardian best understands OR a NYS certified teacher who has been trained in cultural responsiveness, language development, and the needs of ELLs and who is proficient in the home language of the student or parent/guardian or uses a qualified interpreter/translator of the language or mode of communication the student or parent/guardian best understands.

The HLQ is translated into the following languages: Spanish, Chinese, Haitian Creole, Russian, Polish, Korean, Bengali, Arabic, Urdu, Vietnamese, Amharic, and Portuguese (additional languages will be added). Assistance with low incidence language translations can be obtained through your local Regional Bilingual Education Resource Network (RBERN). Link to NYSED HLQ translated versions: <http://www.p12.nysed.gov/biling/bilinged/pub/hlq.html>.

- If the home language is English or the student's primary language is English, then the student is not an ELL and **screening for ELL Identification stops**. The HLQ is placed in the student's cumulative record.
- If the home language is other than English or the student's primary language is other than English, an individual interview must take place. The HLQ is placed in the student's cumulative record.
Proceed to Step 1b Screening – Individual Interview.

1b. Screening – Individual Interview

This interview must be conducted in English and the student’s home language by qualified personnel. The interview and all future oral and written communications must be conducted with a qualified translator/interpreter provided by a school/district. The interview should include a review of the student’s abilities or work samples in:

- reading and writing in English
- reading and writing in the home language
- math

These items are collected or generated during the interview. These can be writing samples or exercises completed at the time of the interview.

For students reentering the NYS public school system, the interview must include a review of prior experience in the home language and/or English instruction to determine if the student shall be administered the New York State Identification Test for English Language Learners (NYSITELL) and to determine the student’s level of literacy in their home language and grade level in math. All documents must be placed and should remain in the student’s cumulative record. Some of this information may be used to determine if a student is a potential Student with Inconsistent/Interrupted Education (SIFE). This will be discussed in 2b.

- If the home language is English or the student’s primary language is English, then the student is not an ELL and **screening for ELL Identification stops**.
- If the student has an IEP, **proceed to Step 1c** –Screening – Student with an IEP.
- If the home language is other than English or the student’s primary language is other than English, then the student may be an ELL. If the student does not have an IEP, **proceed to Step 2a** – Initial ELL Identification Assessment – NYSITELL.

Students eligible for Step 1c would be those who come from other states in the United States or Puerto Rico, with both an identified disability and an IEP. Step 1c of the process outlined does not apply to a new entrant or reentering student who:

1. Is suspected of having a disability
2. Was previously identified as an ELL in NYS within the last two years
3. Comes from another country and/or with documentation from another country showing that the student has a disability, but does not have an IEP from the United States.

For such students, as they have not been determined by an IEP team or Committee on Special Education (CSE) to have a disability, ELL status is initially determined by following only Steps 1a, 1b, and 2.

Step 1c. Screening – Student with an IEP

- If the Language Proficiency Team (LPT) determines that the student with an IEP may have second language acquisition needs, the LPT will determine whether the student shall take the NYSITELL.
- A student with an IEP or a 504 Accommodation Plan may take the NYSITELL without testing accommodations or with testing accommodations, consistent with the student's IEP or 504 Accommodation Plan.

Proceed to Step 2a. – Initial ELL Identification Assessment – NYSITELL. See [Office of State Assessment](#) for more information about the NYSITELL.

- If the LPT recommends to the school principal that the student with an IEP does not have second language acquisition needs, the principal notifies the superintendent and the parents/guardians. The superintendent then has ten school days to agree or disagree. The parents/guardians are notified within five school days of the final determination that the student will not take the NYSITELL, thus is not designated as an ELL, and **screening for ELL Identification stops.**

Language Proficiency Team (LPT) means a committee that makes a recommendation regarding the initial assessment of ELL status for a student with a disability identified pursuant to the Individuals with Disabilities Education Act (IDEA). This means this process only applies to students with IEPs. The LPT must minimally be comprised of:

- a school/district administrator
- a teacher or related service provider with a bilingual extension and/or a teacher of English to Speakers of Other Languages,
- the director of special education or individual in a comparable title (or his or her designee)
- the student's parent/guardian.

Committee on Special Education (CSE) means a multidisciplinary team whose membership is defined in section 4402 of the Education Law and section 200.3 of the Regulations of the Commissioner of Education, to ensure timely evaluations, eligibility determinations and IEP recommendations, and placements for students with disabilities

Individualized Education Program (IEP) means a written statement for a student with a disability that is developed, reviewed, and revised by a CSE. The IEP is the tool that ensures a student with a disability has access to the general education curriculum and is provided the appropriate learning opportunities, accommodations, adaptations, specialized services, and supports needed for the student to progress towards achieving the learning standards and to meet his or her unique needs related to the disability. Federal and State laws and regulations specify the information that must be documented in each student's IEP.

2. INITIAL ELL IDENTIFICATION ASSESSMENT

2a. Initial ELL Identification Assessment

Qualified personnel will administer the statewide English language proficiency identification assessment, the New York State Identification Test for English Language Learners (NYSITELL).

The NYSITELL is administered only once within 10 school days of the student's initial enrollment in a NYS school (see Reentry Identification for students returning to a NYS school).

The purpose of the NYSITELL is to assess the English language proficiency of new entrants whose home language is a language other than English, as indicated on their HLQ and individual interview. It is used to determine if the student is in need of bilingual and/or English as a New Language (ENL) services. Based on NYSITELL results, students will be categorized into one of five levels (Entering/Beginning, Emerging/Low Intermediate, Transitioning/Intermediate, Expanding/Advanced, and Commanding/Proficient), which will determine the number of hours of services each student will receive. NYSITELL results will also help inform teachers for instructional purposes by determining a student's relative strengths in each modality (Listening, Reading, Writing, and Speaking).

For students with disabilities¹, testing accommodations must be provided in the administration of the NYSITELL based on the student's IEP or 504 Plan and consistent with State policy for the administration of this State assessment.

- The identification process must begin no later than the date of the student's initial enrollment or reentry in a NYS school district.
- The NYSITELL 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 NYSITELL may not be administered prior to June 1.

Original copies of the NYSITELL score sheets and all results must be placed and should remain in each student's cumulative record whether he/she is determined to be an ELL or not.

If the student's language proficiency level is one of the following, then the student is an ELL and the parent/guardian will receive an Entitlement Letter:

- **Entering (Beginning):** A student at this English language proficiency level has great dependence on supports and structures to advance his or her academic language skills. As measured by the NYSITELL or the NYSESLAT, a student at this level has yet to meet

the linguistic demands necessary to demonstrate English language proficiency in a variety of academic contexts within this grade level.

- **Emerging (Low Intermediate):** A student at this English language proficiency level has some dependence on supports and structures to advance his or her academic language skills. As measured by the NYSITELL or the NYSESLAT, a student at this level has yet to meet the linguistic demands necessary to demonstrate English language proficiency in a variety of academic contexts within this grade level.
- **Transitioning (Intermediate):** A student at this English language proficiency level shows some independence in advancing his or her academic language skills. As measured by the NYSITELL or the NYSESLAT, a student at this level has yet to meet the linguistic demands necessary to demonstrate English language proficiency in a variety of academic contexts within this grade level.
- **Expanding (Advanced):** A student at this English language proficiency level shows great independence in advancing his or her academic language skills. As measured by the NYSITELL or the NYSESLAT, a student at this level is approaching the linguistic demands necessary to demonstrate English language proficiency in a variety of academic contexts within this grade level.

If the student's language proficiency is the following, then **the student is not an ELL** and the parent/guardian will receive a Non-Entitlement Letter:

- **Commanding:** As measured by the NYSITELL a student at this level has met the linguistic demands necessary to demonstrate English language proficiency in a variety of academic contexts within his or her grade level.

- If a student was not identified as a potential SIFE during Step 1b, **proceed to Step 2c** – Parent Notification/Entitlement of ELL Identification Determination.
- If a student was identified as a potential SIFE during Step 1b, **proceed to Step 2b** – Determination of ELL SIFE.

¹ A CSE must also specify if the student will participate in an alternate assessment on a particular NYS assessment of student achievement. If so, the IEP must provide a statement of why the student cannot participate in the regular assessment and why the particular assessment selected is appropriate for the student. However, while CR Part 154 regulations state that the CSE can recommend an alternate assessment of English language proficiency, this option currently is not available in NYS as the State does not have an approved alternate NYSITELL, NYSESLAT, or other ELP assessment.

REENTRY IDENTIFICATION

Reentry identification shall mean the process followed pursuant to CR section 154-2.3 to determine if a student is an ELL who is re-enrolling in a NYS public school after not having been enrolled in a NYS public school at any time during the preceding immediate two continuously enrolled school years.

If a student is enrolling for the first time in a NYS school district, the district will follow the Identification procedure, pursuant to CR Section 154-2.3(a) regardless of a student's prior schooling.

- If a current ELL leaves NYS and moves to another country, then returns to a NYS public school **within two (2) years**, the student will continue to be designated as an ELL and the district should place the student programmatically based on where the student was when he/she last attended school in NYS.
- If a current ELL leaves NYS and attends school in another US State or Puerto Rico, then returns to a NYS public school **within two (2) years**, the student will continue to be designated as an ELL and the district should place the student programmatically based on where the student was when he/she last attended school in NYS.
- If a current ELL leaves NYS and moves to another country, then returns to a NYS public school **after two (2) years**, the district will follow the steps outlined in the initial identification process.
- If a current ELL leaves NYS and attends school in another US State, then returns to a NYS public school **after two (2) years**, the district will follow the steps outlined in the initial identification process.
- If an ELL scores proficient on the NYSESLAT, and moves to another country, then returns to a NYS public school **after two (2) years**, the district will follow the initial identification process, which may include re-identifying the student as an ELL.

2b. Determination of ELL Student with Interrupted/Inconsistent Formal Education (SIFE)

Students with Inconsistent/Interrupted Formal Education (SIFE) are ELLs who have attended schools in the U.S. for less than 12 months and who, upon initial enrollment in 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 US.

Qualified personnel must administer the SIFE Oral questionnaire and diagnostic tools to determine SIFE status.

The SIFE Oral Interview Questionnaire must be administered, followed by the Diagnostic Tool for SIFEs to ascertain their home language literacy level. Any documents pertaining to SIFE determination must be maintained in the student's cumulative record.

- If the student is designated as a SIFE, **proceed to Step 2c**, Parent Notification/Entitlement of ELL Identification Determination.
- If the student is not designated as a SIFE, **proceed to Step 2c**, Parent Notification/Entitlement of ELL Identification Determination.

2c. Parent Notification/Entitlement of ELL Identification Determination

Within five school days of a student being identified as an ELL, the parent/guardian is to receive written notice in their indicated preferred language, including the following:

- ELL's English language proficiency level
- Parent/Guardian's right to seek a review of ELL Identification/Entitlement Determination
- Information regarding the Parent Orientation session

Proceed to Step 2d – Parent Orientation for New English Language Learners

2d. Parent Orientation for New English Language Learners

Prior to an ELL's placement in a Bilingual Education (BE) or English as a New Language (ENL) program, districts are required to provide the parent/guardian of new entrants with a high quality orientation session. The session must include information regarding:

- Program goals and requirements for BE and ENL programs
- New York State Common Core Learning Standards (CCLS)
- State/Local Assessments
- School expectations for ELLs

All agendas and sign-in sheets must be maintained in a central location in the district/school's files.

NOTE: The student must be placed in a program even if the parent does not attend the orientation.

Proceed to Step 3 – ELL Program Placement.

3. ELL PROGRAM PLACEMENT

Within 10 school days of enrollment, the student must be placed in the appropriate ELL program. Bilingual Education (BE) is the default program for ELL instructional placement; however, parents can decide to have their child enrolled in English as a New Language (ENL) in its place.

Parents/guardians must receive written notification of their child's ELL program placement in a BE or ENL program.

- A BE program is required in a school when 20 or more recently enrolled grade-level students speak the same home language. In New York City, per the ASPIRA Consent Decree, a BE program is required in grades K-8 if 15 or more grade-level students speak the same language in two contiguous grades. If there are not enough qualifying students in a school, but there are within its district, the district must provide a BE program as well as transportation.
- In a school district where the number of eligible students requires that a BE program be provided, but the school district has been granted an exemption, the notification must explain how the school will offer home language support and its plans for instituting a BE program the following school year.

In the event that a parent/guardian does not return the signed notification form within 10 school days, the ELL is placed in a BE program, if one is available in the school and/or district. If the district does not have the required numbers of students to have a BE program, then the student will be placed in an ENL program and counted towards the numbers that are necessary to open a future program. The parent retains the right to make a final decision regarding the placement of their child in a BE program or ENL program and may exercise their right to place their child in an ENL program.

4. REVIEW OF ELL IDENTIFICATION DETERMINATION

The Review of ELL Identification Determination does not allow ELLs to opt out of service.

Upon receiving a written request from a parent/guardian, teacher, or student age 18 years or older within 45 school days of a student's initial ELL designation, a district has 10 school days to initiate a Review of ELL Identification Determination. The review must be concluded within 10 school days (20 school days if the CSE is consulted).

All documents related to the initial or reentry process, including a review of the student's work in English and the home language, must be reviewed by the school principal and qualified personnel.

The school principal and qualified personnel must review the results of a school-based assessment and consult with the CSE if the student has a disability that may impact the student's ability to speak, read, write, or listen in English. The parent/guardian must be consulted, and all documents must be retained in the student's cumulative record.

Before final determination, parents are to be informed in writing and consent to the results of the Review of ELL Identification Determination.

Within six months to one school year of a review, the school principal must review all decisions to remove ELL status. This determination must be in writing. Any reversal must be made in consultation with the superintendent and parent/guardian. If a reversal is determined, the superintendent must provide written notification of the reversal to the Commissioner, the school principal, the parent/guardian, and the student, if the student is age 18 or older.

Any change in ELL designation must be reflected in the student's cumulative record.

5. ELL EXIT CRITERIA

ELLs can exit ELL status in the following ways:

- **Grades K-12:** Scoring at the Commanding/Proficient level on the NYSESLAT.
- **Grades 3-8:** Scoring at the Expanding/Advanced level on the NYSESLAT and 3 or above on the NYS ELA assessment within the same school year.
- **Grades 9-12:** Scoring at the Expanding/Advanced level on the NYSESLAT and 65 or above on the Regents Exam in English within the same school year.

In accordance with section 200.4(d), the CSE must annually determine if a student with a disability needs individual testing accommodations to participate in a State assessment of student achievement.² The NYSESLAT is a NYS assessment of students' English language proficiency achievement. The NYSESLAT must be administered in consideration of any testing accommodation recommended in the student's IEP that is allowable by State policy. In accordance with section 154-3.4, a student with a disability participates in the NYSESLAT with or without the use of testing accommodations, as specified in the IEP and in accordance with State policy for the administration of the assessment. Students with 504 plans that include recommendations for testing accommodations must also be provided those accommodations on the NYSESLAT that are consistent with State policy for the administration of the assessment.

Once an ELL has exited ELL status, he/she is entitled to two years of Former ELL services and is now designated a Former ELL.

² A CSE must also specify if the student will participate in an alternate assessment on a particular NYS assessment of student achievement. If so, the IEP must provide a statement of why the student cannot participate in the regular assessment and why the particular assessment selected is appropriate for the student. However, while CR Part 154 regulations state that the CSE can recommend an alternate assessment of English language proficiency, this option currently is not available in NYS as the State does not have an approved alternate NYSITELL, NYSESLAT, or other ELP assessment.

Graduation Pathways

Section 100.5(d)(7) of the Regulations of the Commissioner, as amended effective February 10, 2015, allows an additional graduation option for a local diploma via appeal of a score of 55-61 on the Regents Exam in English for ELLs otherwise eligible to graduate in January 2015 and thereafter who:

- have received academic intervention services in English language arts,
- have an attendance rate of at least 95 percent for the school year during which the student last took the Regents examination in English,
- have attained a course average in English Language Arts that meets or exceeds the required passing grade by the school and is recorded on the student's official transcript with grades achieved by the student in each quarter of the school year, *and*
- are recommended for an exemption to the passing score on the Regents examination by their teacher or department chairperson in English Language Arts.

These amendments will allow ELLs who meet the above requirements, and who score between 55-61³ on the Regents Exam in English after two attempts at attaining a score of 65 or above, to receive a local diploma via appeal if they:

- successfully appeal the Regents examination in English *and* score at least 65 on each of the four remaining required Regents examinations (or satisfy the corresponding graduation requirement via an available alternative pathway), *or*
- successfully appeal the Regents examination in English *and* score at least 65 on three other required Regents examinations (or satisfy the corresponding graduation requirement via an available alternative pathway) *and* score between 62 to 64 on one other required Regents examination and successfully appeal that exam.

This amendment ensures that late arriving ELLs have the opportunity to graduate from high school when issues of English language proficiency affect their ability to pass other required Regents examinations with a score of 65. ELLs will also remain eligible for the current appeals process, and the committee that reviews other Regents appeals will also review appeals under these amendments.

The text of the regulations, as amended effective February 10, 2015, is available at:
<http://www.regents.nysed.gov/meetings/2015Meetings/February/215p12a1.pdf>

³ Students who score between 62-64 on up to two Regents exams are already eligible under current regulations to appeal those results.