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Office of Instructional Support and Development  
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**TO:** Superintendents and Administrators of Programs Serving Limited English Proficient/English Language Learners (LEP/ELLs)

**FROM:** Jean C. Stevens *Jean C. Stevens*

**DATE:** May 7, 2009

**SUBJECT:** Regulations Governing the Education of LEP/ELLs

I would like to clarify information regarding the option afforded to parents of LEP/ELLs to withdraw their children from a State-mandated instructional program. The information provided herein is consistent with State law and regulations governing instructional programs and services for LEP/ELLs.

Section 3 of Education Law 3204, states that a pupil “who has been identified by any English language assessment instrument approved by the Commissioner as a pupil of limited English proficiency, shall receive a program of bilingual education or English as a second language in accordance with standards established by the Commissioner.” Such standards are established under Part 154 of the Regulations of the Commissioner of Education (CR Part 154.)

Section 154.3(k)(2) of CR Part 154, gives parents the option to “withdraw their children only from participation in a bilingual education program”. Section 154.3(k)(3) further states that, “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.” Consequently, parents cannot withdraw their children from free-standing ESL programs.

CR Part 154 also establishes that to be declassified from LEP/ELL status and removed from a bilingual education or free-standing ESL program, students must score proficient on the New York State English as a Second Language Achievement Test (NYSESLAT), administered annually to all LEP/ELLs.

Please be advised that LEP/ELL student participation in bilingual education and/or free-standing ESL programs must be enforced in the same manner as any other mandated program. School districts must ensure that parents of LEP/ELLs are aware of this and all other requirements associated with the education of their children. Schools must direct parents or guardians challenging any of these requirements to follow the district’s established procedures for the filing of parent complaints.

Please share the information included in this memorandum with staff and parents of LEP/ELLs in your district in order to ensure the appropriate delivery of services to these students.

If you have any questions or require additional information, please contact the Office of Bilingual Education and Foreign Language Studies (OBE-FLS) at (518) 474-8775. We look forward to continuing our working relationship in the provision of services to LEP/ELLs.