Commissioner's Regulation Part 154

Questions
and
Answers[1]

[1] Updated August 2019

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.

This document is designed to provide responses to some of the frequently asked questions about CR Part 154.

Additional questions?
Please send questions or comments to the Office of Bilingual Education and World Languages
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A. IDENTIFICATION AND PLACEMENT

Q: Will the home language of Students with Interrupted/Inconsistent Formal Education (SIFE) be reported to the state and will there be a standard tool (rubric) for determining their literacy level?

A: Yes, the home language is captured for all English Language Learners via SIRS. If a student is found to be potentially a SIFE as defined by CR Part 154-2.2(y), the SIFE Oral Interview Questionnaire should be administered, followed by the Multilingual Literacy SIFE Screener (MLS) to ascertain his/her home language literacy level. The SIFE Oral Questionnaire has been available since the beginning of the 2015-2016 school year.

Q: Upon program placement, what happens in the event that the parent does not return the signed notification form within 10 days?

A: In the event that a parent does not return the signed notification form within 10 school days the ELL is placed in a Bilingual Education (BE) Program if one is available in the school and/or district. If there is no Bilingual Education Program because the district does not have the required numbers, then the student will be placed in an English as a New Language (ENL) program. The parent retains the right to make a final decision regarding the placement of their child in BE or ENL Program.

Q: Where can we find translated HLQs? For low incidence languages not already translated, how does a district get the HLQ translated?

A: The Home Language Questionnaire (HLQ) is currently translated into 41 languages. Contact your local Regional Bilingual Education Resource Network (RBERN) for availability of HLQs in low incidence languages. Please see the following link to access translated versions of the HLQ: http://www.nysed.gov/bilingual-ed/ell-identification-placementhome-language-questionnaire.

Q: **Does the ELL Identification Determination Review Process provide an opportunity for an ELL to opt out of ENL services?**

A: No. At a minimum, all ELLs must receive ENL services. The ELL Identification Determination Review Process is a mechanism to address possible ELL misidentification. http://www.nysed.gov/common/nysed/files/bilingual/ellidchartguidance7.1.15.pdf.

B. PROGRAM REQUIREMENTS

Q: **Is it expected that students will have one period of ELA no matter their English Language proficiency level? When does co-teaching take place?**

A: In the Units of Study, based on an ELL's proficiency level, there are required and flexible units of Integrated ENL. At times, the content area is specifically ELA. At other times the content area could be ELA, Math, Science, or Social Studies. If a teacher is not dually certified in ESOL and the content area, co-teaching takes place in Integrated ENL. Please see the Units of Study Tables [http://www.p12.nysed.gov/biling/resource/cr-part-154/units-of-study-tables.html].

Q: **What does Stand-alone ENL mean? Does it mean that it must be in a pull-out situation or can it be in a push-in model as well?**

A: Stand-alone English as a New Language shall mean a unit of study or its equivalent in which students receive instruction by a New York State certified ESOL teacher in order to acquire the English language needed for success in core content areas. Stand-alone ENL should not be implemented via a push-in model in a content area class as it is a separate time devoted to English language acquisition and English language development. The required amount of stand-alone ENL instruction depends on the English proficiency level of each student. To learn more about the units of study requirements based on proficiency level please visit http://www.nysed.gov/bilingual-ed/units-study-tables-english-new-language-enl-and-bilingual-education-programs.

Q: **What is Integrated ENL?**

A: Integrated ENL is when students receive core content area (i.e., English Language Arts, Math, Science, or Social Studies) and English language development instruction which includes home language supports and appropriate ELL scaffolds carried out by a combination of ESOL and content certified teachers or dually certified teachers.

Q: **In Integrated ENL must the student makeup of the class be a mix of ELL and Non-ELLs? If so, is there a ratio between ELLs and Non-ELLs?**

A: In Integrated ENL, the student makeup of a class does not have to be a mix of ELLs and Non-ELLs but can be if you choose to. An Integrated ENL class could be made up entirely of ELLs. The Integrated nature of Integrated ENL is in the instruction, not necessarily the student make-up of the class.

Q: **What are the requirements to establish a new Bilingual Education Program, and continue with an existing Bilingual Education Program? Is it 15 total ELLs in the school or 15 ELLs in a grade?**

A: The requirement to establish a new Bilingual Education Program is 20 or more ELLs of the same grade level, and all of whom have the same home language (other than English) in a school and/or district. If a BE Program had 15 ELLs the previous year it must continue into the next school year. New York City must follow the provisions of the 1972 ASPIRA Consent Decree which is 15 ELLs in two contiguous grades.

Q: **To which classes does the two-year grade span apply?**

A: Per CR 154-2.3(i), the maximum allowable for grouping instruction in a grade K-12 ENL or BE Program is two contiguous grades except for ELLs in a special class as defined by section 200.1(uu). This applies to all Integrated ENL, Stand-alone ENL, and BE classes.

Q: **ELL students who are also Students with Disabilities (SWD) find it difficult to meet all of the required ELL services. What would be a recommendation for a 9th grade Entering/Beginning ELL who also needs resource services in an eight-period day?**

A: The Units of Study provide inherent flexibility to meet the varied needs of ELLs. In the example presented, in addition to the required periods of Integrated ENL in ELA and Stand-alone ENL, the 9th grader Entering/Beginner ELL on an IEP has flexibility in the 3rd unit of study: this could be either Integrated ENL in ELA, Math, Science, or Social Studies or another Stand-alone. The co-teaching option to deliver Integrated ENL instruction also allows flexibility for teachers to combine their expertise in collaborating to deliver simultaneous instruction.

Q: In order for students to receive content area credit, must an Integrated ENL class be taught by one dually certified ESOL/content area teacher or a dually certified teacher?

A: CR Part 154-2.3(h)(2) outlines the grades 9-12 Units and Credits of Study of Integrated and Stand-alone ENL classes. Integrated ENL in each content area leads to an ELL earning content area credit in either ELA, Math, Science, or Social Studies. Stand-alone ENL leads to elective credit. Personnel qualified to teach Integrated ENL and Stand-alone ENL are defined in sections CR Part 154-2.2(q) and (r). Subpart 154-2 regulations can be found at: http://www.regents.nysed.gov/meetings/2014/September2014/914p12a3.pdf.

Q: Can a student with disabilities (SWD) be exempt from ENL, if he or, she is in a self-contained class, is classified as speech impaired, receives speech therapy, OT, or PT, and cannot communicate in either L1 or L2? What about children who will be classified as Other Health Impaired (OHI) and Speech/Language impaired due to OHI?

A: No. Pursuant to CR Part 154-2.3(d)(9), a Stand-alone ENL program must be provided to all ELLs enrolled in public and charter schools who are not enrolled in a BE program. ENL instruction is also required for ELLs served in a BE program. The Committee on Special Education (CSE) should consider the language needs of each student as they relate to the student's IEP, as well as the special education supports and services a student needs to address his or her disability and to support the student's participation and progress in the general education curriculum, which includes ENL for ELLs. When developing recommendations for a student who does not speak any language, the CSE should consider the student's receptive language skills in English and the native language.

Q: **In a Bilingual Education Program, do students in grades 9-12 who are granted Language Other Than English (LOTE) credits must be included in Home Language Arts (HLA) instruction?**

A: Yes. Home Language Arts is a required component of a BE Program at every proficiency level. Receiving LOTE credit from previous schooling does not exempt this requirement.

Q: **Who is eligible to apply for a one-year waiver to be exempt from creating a new BE Program? What is the process? What are to be considered acceptable alternative home language supports?**

A: NYSED has developed a BE Program Waiver application and process following the provisions of CR Part 154- 2.3(d)6. As of 2019-2020, a district may apply for the waiver if it has difficulty opening a BE Program in languages that are less than 5% of the statewide ELL population (currently, all languages other than Spanish and Chinese). A district may apply for this exemption on an annual basis for no more than five consecutive years, in an eligible language at either the district level or at one or more schools that are required to offer a BE program. However, in order to be granted this exemption, districts must demonstrate the efforts that are being made to recruit qualified bilingual teachers eligible languages other than Spanish and Chinese that are needed to establish bilingual programs and the plans for ongoing and intensive efforts to recruit qualified BE teachers in that language, and a plan for how the district will provide alternate home language supports in the form of bilingual teacher assistants/aides and/or heritage language programs and make such home language supports available for all students who would otherwise be enrolled in a BE program. For more information on the waiver, please visit http://www.nysed.gov/bilingual-ed/forms-and-waivers.

Q: **Will a full period every other day program fulfill the integrated ENL/ESL requirement?**

A: In the Units of Study, based on an ELL's proficiency level, there are required, and flexible units of Integrated ENL. Scheduling decisions are made at the district or school level. Please refer to the Unit of Study Tables: http://www.p12.nysed.gov/biling/resource/cr-part-154/units-of-study-tables.html

Q: **What other services and supports will be accepted in lieu of ENL/ESL services?**

A: There are no services in lieu of ENL services for ELLs.

Q: **Can ELLs receive credit for a class that is being taught by a teacher who is teaching one class outside of their license area. For example: If an ESOL teacher is teaching a Global Studies class, will the students in that class be able to receive credit for the class?**

A: Yes. In the example given, the student would be permitted to receive one content-area credit in social studies, while satisfying the CR Part 154 Integrated ENL requirement. However, if the teacher does not have dual certification in ESOL and Social Studies, then a certified 7-12 Social Studies teacher must co-teach the class with a certified ESOL teacher in order for one content-area credit in Social Studies to be awarded.

Q: **Dually-certified teachers, or pairs of co-teachers who are appropriately certified, want to know if they can provide integrated ENL/ELA instruction to their Entering and Emerging ELLs in a separate classroom of ELLs only. Does integrated refer to instruction of ENL and ELA, or does it require integration with non-ELL students?**

A: No, they can be all ELLs, *integrated* refers to content, and therefore you can integrate the core content and English language development instruction.

C. Teacher Certification

Q: **How is NYSED addressing the shortage of qualified bilingual teachers?**

A: To address the critical issue of the shortage of qualified staff, NYSED has developed a number of programs to recruit, evaluate, and develop Bilingual and ENL teachers throughout the state, including the Clinically Rich Intensive Teacher Institute which provides tuition assistance for Bilingual and ENL courses that lead to a teaching license. NYSED continues to explore different avenues and incentives

to encourage teachers to enroll in courses and to obtain a bilingual extension and/or TESOL certification. For more information please visit: http://www.nysed.gov/bilingual-ed/ellmll-educator-certification.

Q: **Are there any Supplemental Certification and New Pathways for teachers of ELLs?**

A: Yes. NYSED has made available Supplemental Certification Pathways for New York State Certified English to Speakers of Other Languages (ESOL) Teachers to obtain Content Area certification and for Content Area teachers to obtain TESOL certification. NYSED continues to explore different avenues and incentives to encourage teachers to enroll in courses and to obtain a bilingual extension and/or TESOL certification. For more information please visit: http://www.nysed.gov/bilingual-ed/ellmll-educator-certification.

D. Professional Development

Q: **Does the 15% refer to the 175-hour PD requirement for teachers who are certified under the post-2004 certification requirements, or does it pertain to all teachers – including those with permanent certifications?**

A: Yes. The 15% refers to the 175-hour PD requirement for teachers and applies to teachers who fall under the PD 175-hour requirements. Under Part 154-2.3(k), a minimum of fifteen percent (15%) of required professional development hours for all teachers must be dedicated to language acquisition. For all Bilingual and English as a Second Language teachers, a minimum of fifty percent (50%) of the required professional development hours must be dedicated to language acquisition in alignment with core content area instruction. The Blueprint for ELL Success specifies the need for ongoing professional development.

Q: **Is the 15% a portion of the PD required by each district contractually? Or is it 15% of the total PD offered?**

A: It is 15% of the existing 175 hours requirement.

Q: **Must the ELL-oriented PD be offered separately, or can they be embedded in other PD sessions?**

A: To meet ELL PD requirements under Part 154-2.3(k), the professional development must be ELL specific, and should be relevant or aligned to other PD initiatives in the school or district.

Q: **What happens if the district offers the PD, but teachers choose not to attend?**

A: Attending these PD sessions is not a choice; it is a regulatory requirement under Part 154-2.3(k). The expectation is that all districts are to provide PD to all teachers as indicated in the Blueprint for ELL Success (e.g., if there is PD on Common Core-aligned instruction, then how does it meet the needs of English Language Learners and promote their English language skills and academic progress).

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