



# Commissioner's Regulations CR Part 154

## Guidance

**School District Justification to Expand the  
Maximum Allowable Grade Span to Three  
Contiguous Grades in 1-12  
English as a New Language (ENL) or  
Bilingual Education (BE) Classes**

## INTRODUCTION

The presence and population of English Language Learners/Multilingual Learners (ELLs/MLLs) vary considerably among New York State schools. Some communities have no ELLs/MLLs, while others have small numbers of ELLs/MLLs of wide-ranging ages; for instance, a district might have many ELLs/MLLs in grade 2 but none in grade 1. Others have enough ELLs/MLLs in a given grade to create one self-contained ENL classroom per grade or across two grades, with higher proficiency ELLs/MLLs distributed across the remaining classes. This demographic reality must, however, be balanced with what we know about best practices to use with this growing subset of our student body.

The New York State Education Department (NYSED) understands that districts with small numbers of ELLs/MLLs may face challenges for finding appropriate staffing for ENL or BE classes. However, it is critical to keep in mind possible unintended consequences that can arise from grouping too many grades together for instructional purposes. This document was created in response to feedback that the NYSED Office of Bilingual Education and World Languages (OBEWL) has received from the field regarding Commissioner’s Regulations (CR) Part 154, to support all districts’ efforts in meeting the grade span requirement of Part 154-2.3(i) and to provide guidance to qualifying districts with less than 30 ELLs/MLLs in applying for a one year waiver to expand the maximum allowable grade span from two to three grades.

## QUALIFYING FOR THE WAIVER

**Q:** What do the regulations state about the grouping of ELLs/MLLs for instruction and the qualifications for the waiver?

**A:** According to CR section 154-2.3 (i), “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 class, as defined by section 200.1(uu) of this Title.” NYSED data analysis indicates that a number of school districts throughout New York State have fewer than thirty ELLs/MLLs spread across grade levels, which makes it challenging to group ENL and BE classes with a maximum of two grade spans. As a result, New York State is providing flexibility to such qualifying districts from the two grade span requirement of Part 154-2.3(i). Districts with fewer than thirty (30) ELLs may apply for a **one year** waiver to expand the two contiguous grade span requirement for ENL or BE classes to three contiguous grades, renewable on an annual basis.

**Q:** Which districts qualify for this waiver?

**A:** Only districts with fewer than 30 ELLs/MLLs may apply for this waiver.

## INSTRUCTIONAL GROUPING

**Q:** What grades can be grouped into grade spans of three contiguous years?

**A:** Schools that have an approved waiver may extend the maximum allowable grade span for grouping instruction in Grades 1-12 English as a New Language or Bilingual Education to **three** contiguous grades, except for ELLs/MLLs in a special class as defined by section 200.1(uu).

**Q:** What type of student groupings will this waiver allow? To which instructional settings is it applicable?

**A:** This waiver allows for the grouping of three contiguous grades of ELLs/MLLs for the Stand-alone English as a New Language component of an ENL or a BE program. For example, in addition to applying other language and content-focused lessons and instructional strategies, an ENL teacher may group students in Grades 1, 2, and 3 who all need to learn or review content like the similarities and differences between urban and rural life. In another possible scenario, an ENL teacher might work with this small group to build their background knowledge and pertinent vocabulary on this curricular focus.

While content area high school students might be grouped in courses that include different grade levels (e.g. 9<sup>th</sup> grade science), care must be taken to group ELLs/MLLs appropriately in content area courses, especially at the secondary level. It would not be beneficial for an ELL/MLL to be placed into a group with learning targets or materials that are either too easy or difficult for them.

**Q:** What are recommended “best practices” for grouping ELLs/MLLs?

**A:** Best practices focus on instruction and certification. Instruction should be grade appropriate for the individual students in an instructional group. The NYSED OBEWL *Blueprint for ELL Success* recommends that “districts and schools engage all English Language Learners in instruction that is grade-appropriate, academically rigorous, and aligned with the New York State Prekindergarten Foundation for the Common Core and P-12 Common Core Learning Standards.”<sup>1</sup>

Providing small-group reading instruction in five core reading elements (phonological awareness, phonics, reading fluency, vocabulary, and comprehension) can help ELLs/MLLs in the elementary grades (U.S. Department of Education, n.d.). Small group instruction should be rigorous for all student members. The Blueprint advises districts and schools to “[use] academic language and content-area supports to strategically move ELLs along the language development continuum utilizing New York State Bilingual Progressions.” (p. 3) There is strong evidence for the use of small group literacy instruction at the elementary level (Gersten, R., Baker, S.K., Shanahan, T., Linan-Thompson, S., Collins, P., & Scarcella, R. (2007)).

“Small group instruction is beneficial for ELLs/MLLs across all grades and creates a supportive learning environment.” (Abbott et al. 2007; Kamps, Spaulding, et al., 2004).

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<sup>1</sup> Currently, New York State utilizes the [New York State Next Generation Learning Standards](#).

## CHALLENGES & SOLUTIONS

**Q:** What are some potential instructional issues created by grouping students of three grades in one instructional group?

**A:** Schools must be mindful of the unforeseen consequences of grouping three grades into one instructional group, which must be prevented by avoiding:

- **Inappropriate English proficiency level:** Avoid grouping students from all five English proficiency levels (Entering, Emerging, Transitioning, Expanding and Commanding<sup>2</sup>). Students in a group may be at opposite ends of the language learning continuum and will therefore have different linguistic needs. Instead, individualized instruction should be provided for most student groups.
- **Developmental inappropriateness:** Students of different ages may have different developmental needs, especially at the younger grades. For example, students in grade 1 can be five years old and students in grade 2 can be eight years old. This is a developmentally wide range. Thus, care must be taken to ensure developmental appropriateness of content to be learned and skills to be developed. In addition, younger students generally have shorter attention spans that require shorter activity duration. These issues may, however, lessen as students get older.
- **Instructional inappropriateness:** Students in different grades will bring different types and levels of background knowledge along with varying ability to complete tasks independently. Teachers must be mindful in differentiating instruction to account for background knowledge and ability to learn independently (e.g. by reading a book or by watching a video).

**Q:** What are some potential solutions for staffing shortages while long term solutions are developed by individual districts?

**A:** Potential solutions for districts include:

- *Sharing Teachers Across Districts:* Two nearby districts may consider sharing a teacher to work with ELLs/MLLs in both districts.
- *Encouraging Teachers To Seek Additional Certification:* Districts should encourage current teachers to obtain additional certification. Teachers can earn an additional content area certification, a certification in English to Speakers of Other Languages (ESOL), or a BE Extension by taking as few as 12 to 15 credits. The [Bilingual Extension](#) allows individuals who are fluent in English and an additional language to teach in a BE program and requires an existing valid base certification (e.g. Childhood Education or Initial Literacy Certification).
  - Districts should consider working with nearby institutions of higher education to host courses on-site so that a cohort of staff members can earn a BE extension or ESOL certification at the school site where they work.

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<sup>2</sup> Students who score at the Commanding level are proficient in English and not ELLs/MLLs. However, some Commanding level students may be in ENL classes in order to receive Former ELL services under Part 154-2.3(h).

- *Specific Resources and Initiatives For Teacher Recruitment, Training, and Certification:* Districts should consider the following resources and initiatives for teacher recruitment, training, and certification:
  - Supplementary certification pathways are available to allow content area teachers to obtain [ESOL certification](#), and for ESOL teachers to receive [content area certification](#), as described above.
  - [Clinically Rich Intensive Teacher Institutes](#) prepare candidates for BE extensions and ESOL certification and are available across the state. A fully online program is available through Queens College, with more to become available soon. Tuition for the ITI program is subsidized by NYSED grants. NYSED has also published a list of institutions providing [Transitional B](#) and [Transitional C](#) programs.
  - [The Teachers of Tomorrow Program](#) provides a variety of incentives that encourage prospective teachers to teach in a school district that is experiencing a teacher shortage or subject area shortage.
  - [Teacher Opportunity Corps \(TOC\)](#) is a program with the goal of enhancing the preparation of teachers and prospective teachers to address the learning needs of students at risk of truancy, academic failure, or dropping out of school, as well as increasing the participation rate of historically underrepresented and economically disadvantaged individuals in teaching careers.
  - [Search Certification Requirements](#): This system allows individuals to review requirements for specific New York State teaching certificates.
  - [Office of Teaching Initiatives web site](#): This site has up to date information on certification changes and many pages regarding NYS certification.

## CONCLUSION

In some cases, schools or districts may need to hire additional ESOL or BE teachers to comply with CR Part 154. However, the suggestions and solutions contained herein may address the staffing difficulties facing districts and schools across New York State. We at the NYSED's Office of Bilingual Education and World Languages are here to support you in your efforts to meet the needs of our ELLs/MLLs.

## REFERENCES

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For additional questions, please contact the Office of Bilingual Education and World Languages  
[OBEWL@nysed.gov](mailto:OBEWL@nysed.gov) or your Regional Bilingual Education Resource Network (RBERN)  
<http://www.p12.nysed.gov/biling/bilinged/betac.html>.