




To: P-12 Education Committee
From: Ken Slentz 
Subject: Proposed Amendments to Part 154 of Commissioner's Regulations
Date: June 16, 2014

Authorization(s):

SUMMARY

Issue for Discussion

Should the Board of Regents amend Commissioner's Regulations Part 154 as part of the Department's effort to improve instruction and programming for English Language Learners (ELLs) to ensure stronger outcomes for this student population?

Reason(s) for Consideration

Implementation of Policy.

Proposed Handling

This item will come before the P-12 Education Committee for discussion at the June 2014 Regents meeting.

Procedural History

At its December 2011 meeting, the Board of Regents directed Department staff to engage the field to determine the areas of Part 154 that should be revised or enhanced to better serve the needs of ELLs.

As a result, over the past three years, Department staff consulted with stakeholders statewide in various ways, including:

- Focus Groups (over 100 key stakeholders statewide)
- Survey to the Field (over 1600 respondents)
- Review of Draft Recommendations by key stakeholders
- Review of Draft Recommendations by U.S. Department of Justice (USDOJ), U.S. Office of Civil Rights, and U.S. Department of Education (USDE) Title I and Title III Offices
- Review of Draft Recommendations by members of the Board of Regents

In August 2013, after review and consultation with members of the Board of Regents, the Department released draft recommendations for review by stakeholders. Comments were received through October 2013. In late December 2013 and early January 2014, the Department met with USDE and USDOJ to review the draft recommendations.

In April 2014, Department staff presented the Board of Regents with an update on the recommendations and stakeholder engagement process, and the Board directed staff to develop a proposal for amendments to Part 154 of the Commissioner's Regulations for the Board's discussion at the May 2014 meeting.

In May 2014, Department staff presented the Board of Regents with a proposal for amendments to Part 154 of the Commissioner's Regulations for discussion. The Board of Regents discussed the proposal and directed staff to finalize the proposal for amendments to Part 154 of the Commissioner's Regulations to be published in the State Register on July 9, 2014.

Background Information

Over the past 10 years, New York State ELL student enrollment has increased by 20%. According to the U.S. Department of Education, ELL student enrollment has increased by 18% nationally. Currently in New York State, over 230,000 ELLs make up 8.9%% of the total student population. Their linguistic diversity makes up over 140 languages spoken in New York State; 61.5% for whom Spanish is the home language. In addition, 41.2% were born in another country.

In the landmark 1974 decision, *Lau v. Nichols*, the United States Supreme Court established the right of ELL students to have "a meaningful opportunity to participate in the educational program." That same year, an agreement between the New York City Board of Education and ASPIRA of New York (called the ASPIRA Consent Decree) assured that the ELLs would be provided bilingual education. As such, ELL students must be provided with equal access to all school programs and services offered to non-ELL students, including access to programs required for graduation. Education Law §3204 and Part 154 of the Regulations of the Commissioner (Part 154) contain standards for educational services provided to ELLs in New York State. With this

framework in place, the Department began to engage stakeholders to determine how the programs and services required in Part 154 could be enhanced to better meet the needs of the State's multilingual population.

The Department's process began in early 2012 with focus group discussions representing over 100 key stakeholders from around the state. Those discussions informed the development of a statewide survey of policy options that was released in June 2012, and resulted in over 1,600 responses from teachers, principals, superintendents, advocates and others interested in the education of ELLs. The Department then used the survey results and focus group discussions to develop proposed policy changes and enhancements. Proposed changes were then shared with stakeholders for feedback and were also shared with the U.S. Department of Justice Office of Civil Rights, U.S. Department of Education staff responsible for Title I and Title III, and members of the Board of Regents for review and feedback.

Summary of Proposed Amendments

The proposed amendments would be required to be implemented beginning with the 2015-2016 school year. Until then, school districts must continue to implement the existing provisions of Part 154 or, should the Board adopt the proposed regulatory amendments, school districts may begin implementing the new provisions.

The specific areas of proposed regulatory amendments are as follows and are further articulated in the attached chart:

- Identification
- Parent Notification and Information
- Retention of Identification and Review of Records
- Placement
- Program Requirements and Provision of Programs
- Grade Span and Program Continuity
- Exit Criteria
- Support Services and Transitional Services
- Professional Development¹
- District Planning and Reporting Requirements

Pursuant to Education Law §2854(1)(b), charter schools must meet the civil rights requirements applicable to public schools regarding the provision of services and programs to English Language Learners, but are provided with broad autonomy with respect to many areas of education law and regulation. Accordingly, the proposed amendments clarify that charter schools must implement either the provisions of Part 154 or an alternative language instruction educational program based on scientifically based research and approved by their charter entity.

¹ Corresponding proposed regulatory amendments to Commissioner's Regulation Part 80 will be presented to the Board at a future meeting.

In addition to the proposed regulatory amendments to Part 154, the Department will propose amendments to statutes and regulations outside of the scope of Part 154 to the Board at a future meeting. The specific areas of such proposals are as follows and are further articulated in the attached chart:

- Certification²
- Graduation Requirements³

Timetable for Implementation

It is anticipated that separate Notices of Proposed Rulemaking will be published in the State Register on July 9, 2014 for: (1) the proposed amendment adding Subparts 154-1 and 154-2 and (2) the proposed amendment adding Subpart 154-3. It is anticipated that both proposed amendments will be presented to the P-12 Education Committee for recommendation and to the Full Board for adoption at the September meeting, which is the first Regents meeting scheduled after the expiration of the 45-day public comment period prescribed for State agency rule makings in the State Administrative Procedure Act. If adopted at the September Regents meeting, the proposed amendments will become effective on October 1, 2014.

² Additionally, please see attached for Legislative Request for statutory change.

³ Proposed regulatory amendments to Commissioner's Regulation Part 100 will be presented to the Board at a future meeting.

IDENTIFICATION

<u>EXISTING REGULATION/GUIDANCE</u>	<u>PROPOSED REGULATORY CHANGE</u>	<u>TIMELINE FOR IMPLEMENTATION</u>	
<p>A three step ELL identification process by school staff, including:</p> <ul style="list-style-type: none"> (1) administration of the Home Language Questionnaire, (2) an informal individual interview with the student; and (3) the administration of a statewide English language proficiency identification assessment. <p>Current regulations do not define the qualifications of staff required to administer the identification process.</p>	<p>Implement a four step ELL identification process to ensure holistic and individualized decisions can be made by qualified staff, including:</p> <ul style="list-style-type: none"> (1) administration of the Home Language Questionnaire, (2) an individual interview with the student, (3) a determination for students with a disability of whether the disability is the determinant factor affecting the student’s ability to demonstrate proficiency in English; and (4) the administration of a statewide English language proficiency identification assessment. <p>Qualified staff is defined as an bilingual or ESL teacher, or a teacher trained in cultural competency, language development and the needs of English Language Learners.</p>	<p>2014-2015 Planning / Optional Implementation</p>	<p>2015-2016 Full Implementation</p>
<p>Guidance documents define Students with Interrupted Formal Education, but do not clearly indicate that they should be identified as part of the identification process.</p>	<p>Districts shall identify ELLs as Students with Interrupted/Inconsistent Formal Education as part of the identification process.</p>		
<p>Current regulations do not provide the opportunity for a review process addressing possible ELL misidentification.</p>	<p>Implement a review process to determine if a student was misidentified upon enrollment by qualified staff to be completed within the first 45 days of school.</p> <p>A review would commence upon request by a parent; or teacher with the consent of the parent; or a student, if the student is 18 years old or older.</p> <p>Parental, or student if the student is 18 years or older, consent; principal and superintendent approval are required before a change in determination.</p>		

PARENT NOTIFICATION AND INFORMATION

<u>EXISTING REGULATION/GUIDANCE</u>	<u>PROPOSED REGULATORY CHANGE</u>	<u>TIMELINE FOR IMPLEMENTATION</u>	
Current regulations require school districts to make an effort to meet with parents or persons in parental relation at least twice a year to help them understand the goals of the program and how they might help their children.	School staff shall meet with parents or persons in parental relation at least once a year, in addition to other generally required meetings with parents, to discuss their child’s academic content and language development progress and needs.	2014-2015 Planning / Optional Implementation	2015-2016 Full Implementation

RETENTION OF RECORDS

<u>EXISTING REGULATION/GUIDANCE</u>	<u>PROPOSED REGULATORY CHANGE</u>	<u>TIMELINE FOR IMPLEMENTATION</u>	
Current regulations do not require districts to maintain records of a parent’s preferred language or mode of communication, or records of notices and forms generated during the identification and placement process in ELL student’s cumulative record.	Districts shall collect and maintain <ul style="list-style-type: none"> • records indicating parent’s preferred language or mode of communication • records of notices and forms generated during the identification and placement process in ELL student’s cumulative record. 	2014-2015 Planning / Optional Implementation	2015-2016 Full Implementation

PLACEMENT

<u>EXISTING REGULATION/GUIDANCE</u>	<u>PROPOSED REGULATORY CHANGE</u>	<u>TIMELINE FOR IMPLEMENTATION</u>	
Current guidance requires placement in a Bilingual Education / ESL program within 10 school days after initiating the identification process.	Continue to require placement in a Bilingual Education / ESL program within 10 school days after initiating the identification process.	2014-2015 Planning / Optional Implementation	2015-2016 Full Implementation
Current regulations do not require districts to complete the identification process before an ELL student receives a final school placement.	Districts shall complete the identification process before an ELL student receives a final school placement.		

PROGRAM REQUIREMENTS & PROVISION OF PROGRAMS

<u>EXISTING REGULATION/GUIDANCE</u>	<u>PROPOSED REGULATORY CHANGE</u>	<u>TIMELINE FOR IMPLEMENTATION</u>	
<p>Current regulations require each school with 20 or more ELL students of the same grade who speak the same home language provide a Bilingual Education program.</p> <p>Current regulations do not require districts to conduct an annual estimate of ELL enrollment, nor create a sufficient number of Bilingual Education programs in the district, if there are 20 or more ELLs of the same grade level who speak the same home language district wide.</p>	<p>Continue to require that each school with 20 or more ELL students of the same grade who speak the same home language provide a Bilingual Education program.</p> <p>Districts shall create annual estimates of ELL enrollment before the end of each school year and create a sufficient number of Bilingual Education programs in the district, if there are 20 or more ELLs of the same grade level who speak the same home language district wide.</p> <p>Districts will be allowed to apply for a one-year waiver for languages that represent less than 5% of the statewide ELL population, if they can demonstrate they meet established criteria for a one-year waiver and provide alternate home language supports.</p> <p>New programs triggered by this provision shall be placed in a school that has not been identified as a Schools Under Registration Review or as a Focus or Priority School, if such school exists in the district.</p>	<p>2014-2015 Planning / Optional Implementation</p>	<p>2015-2016 Full Implementation</p>
<p>Current regulations require districts to provide English as a Second Language instruction through a Stand-alone model only.</p>	<p>English as a Second Language instruction shall be offered through two settings:</p> <ul style="list-style-type: none"> (1) Integrated ESL (ESL methodologies in content area instruction co-taught or taught by a dually certified teacher); and (2) Stand-alone (ESL instruction with an ESL teacher to develop the English language needed for academic success). 		

GRADE SPAN AND PROGRAM CONTINUITY

<u>EXISTING REGULATION/GUIDANCE</u>	<u>PROPOSED REGULATORY CHANGE</u>	<u>TIMELINE FOR IMPLEMENTATION</u>	
Current regulations do not address program continuity or grade span.	<p>Districts shall provide program continuity so that ELLs can continue to receive the program type (Bilingual Education or ESL) in which they were initially enrolled. In order to ensure program continuity, schools shall continue to provide a Bilingual Education program if at least 10 students who speak the same home language were enrolled in such program in the previous grade.</p> <p>The maximum allowable grade span for grouping instruction in ESL and Bilingual Education programs is two contiguous grades.</p>	2014-2015 Planning / Optional Implementation	2015-2016 Full Implementation

EXIT CRITERIA

<u>EXISTING REGULATION/GUIDANCE</u>	<u>PROPOSED REGULATORY CHANGE</u>	<u>TIMELINE FOR IMPLEMENTATION</u>	
<p>Current regulations only allow students to exit ELL status through one criteria:</p> <p>(1) scoring proficient on the statewide English language proficiency assessment.</p>	<p>Implement three different criteria to allow students to exit ELL status, including:</p> <p>(1) scoring proficient on the statewide English language proficiency assessment;</p> <p>(2) a combination of NYSESLAT scores and 3-8 ELA assessment or ELA Regents scores; or</p> <p>(3) a determination that an ELL with a disability cannot meet criteria (1) or (2) because of their disability and are not in need of ELL services.</p>	2014-2015 Planning / Optional Implementation	2015-2016 Full Implementation

SUPPORT AND TRANSITIONAL SERVICES

<u>EXISTING REGULATION/GUIDANCE</u>	<u>PROPOSED REGULATORY CHANGE</u>	<u>TIMELINE FOR IMPLEMENTATION</u>	
<p>Current regulations do not require districts to annually identify ELLs not demonstrating adequate performance. Current regulations do require districts to provide appropriate supports services needed for ELL students to achieve and maintain a satisfactory level of academic performance.</p>	<p>Districts shall annually identify ELLs not demonstrating adequate performance and provide additional supports aligned to district wide intervention plans.</p>	2014-2015 Planning / Optional Implementation	2015-2016 Full Implementation

Current state and federal guidance requires districts to provide one to two years of transitional supports to ELLs who exit out of ELL status (former ELLs).	Districts shall provide at least two years of transitional supports to ELLs who exit out of ELL status (former ELLs).		
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PROFESSIONAL DEVELOPMENT AND CERTIFICATION

<u>EXISTING REGULATION/GUIDANCE</u>	<u>PROPOSED REGULATORY CHANGE</u>	<u>TIMELINE FOR IMPLEMENTATION</u>	
Current regulations require in-service training to all personnel providing instruction or other services to ELLs, but do not require specific types of professional development beyond the general requirement of 175 hours of professional development over 5 years.	Require that 15 percent of professional development hours for all teachers and administrators be specific to the needs of ELLs, language acquisition and cultural competency.		
Current regulations require in-service training to all personnel providing instruction or other services to ELLs, but do not require specific types of professional development beyond the general requirement of 175 hours of professional development over 5 years.	Require that 50 percent of professional development hours for all Bilingual Education and ESL teachers to be specific to the needs of ELLs, language acquisition and cultural competency.	2014-2015 Planning / Optional Implementation	2015-2016 Full Implementation

DISTRICT PLANNING AND REPORTING

<u>EXISTING REGULATION/GUIDANCE</u>	<u>PROPOSED REGULATORY CHANGE</u>	<u>TIMELINE FOR IMPLEMENTATION</u>	
Current regulations require districts to provide information in plans regarding programs for ELLs, information provided to parents, methods to annually measure and track ELL progress, and systems to identify, assess, and exit students from ELL status.	Districts shall provide additional information in plans regarding programs for subpopulations of ELLs, information provided to parents, methods to annually measure and track ELL progress, and systems to identify, assess, and exit students from ELL status.	2014-2015 Planning / Optional Implementation	2015-2016 Full Implementation

<p>Current regulations do not require districts to provide information in reports regarding programs for subpopulations of ELLs or by languages spoken in the district. Current regulations do require districts to provide information in reports regarding programs for ELLs, information provided to parents, methods to annually measure and track ELL progress, and systems to identify, assess, and exit students from ELL status</p>	<p>Require districts to provide additional information in reports regarding programs for subpopulations of ELLs including program information, if offered, by subpopulations and languages spoken in the district.</p>		
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The following recommendations have also been presented to the Board of Regents in April and May 2014 and will be forthcoming in proposed statutory changes and proposals to amendment regulations outside of the scope of Part 154.

<h2 style="text-align: center; margin: 0;">PROFESSIONAL DEVELOPMENT AND CERTIFICATION</h2>		
<u>EXISTING REGULATION/GUIDANCE</u>	<u>PROPOSED REGULATORY CHANGE</u>	<u>TIMELINE FOR IMPLEMENTATION</u>
<p>Current regulations do not provide certification areas for bilingual teaching assistants nor do they provide tenure or seniority protection areas for bilingual teaching assistants, bilingual teachers and ESL teachers.</p>	<p>Create certification areas for bilingual teaching assistants and tenure and seniority protection areas for bilingual teaching assistants, bilingual teachers and ESL teachers.</p>	<p>These proposals will require statutory change to Education Law and subsequent regulatory amendments to amend Part 80.</p>
<p>Current regulations do not require prospective teachers to complete coursework on ELL instructional needs, language acquisition and cultural competency.</p>	<p>Require that all prospective teachers complete coursework on ELL instructional needs, language acquisition and cultural competency.</p>	<p>Proposals for regulatory amendments to section 52.21 will be forthcoming.</p>

<h2 style="text-align: center; margin: 0;">GRADUATION REQUIREMENTS</h2>		
<u>EXISTING REGULATION/GUIDANCE</u>	<u>PROPOSED REGULATORY CHANGE</u>	<u>TIMELINE FOR IMPLEMENTATION</u>
<p>Current regulations do not allow for additional graduation requirement options for ELLs who enter the United States in 9th grade or above.</p>	<p>Allow for additional graduation requirement options, only for ELLs who enter the United States in 9th grade or above, including:</p> <ul style="list-style-type: none"> • Scoring 65 or higher on all Regents except the ELA, and passing a rigorous exam of English proficiency that has been approved as an alternative to the English Regents examination, to receive a Regents diploma. • Scoring 65 or higher on all Regents except the ELA, and scoring 55-64 on the ELA to appeal and receive a local diploma. 	<p>Proposals for regulatory amendments to Part 100.5 will be forthcoming.</p>



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Tenure and Seniority Protections for Bilingual and English to Speakers of Other Languages Teachers and Teaching Assistants

The Issue:

Due to the many fiscal challenges of the State, many districts have been forced over the course of the last couple of years to take steps to reduce their workforce. By statute, when a teacher's or teaching assistant's position is abolished, the teacher or teaching assistant having the least seniority in the system within the tenure area of the position abolished must be discontinued. An unintended consequence is that as districts hire new bilingual teachers and teaching assistants to serve expanding populations of English Language Learners (ELLs) and subsequent layoffs are made due to fiscal constraints, districts may be forced to lay off the more junior bilingual or English to Speakers of Other Languages (ESOL) teachers or teaching assistants that they need.

For example, if a district with dual language elementary school programs (with bilingual students) in which there are teachers who hold certification in the early childhood area and in bilingual education needs to lay off a teacher in the elementary tenure area for budgetary reasons, they must lay off the teacher with the least seniority. Even though the district is required by law to provide bilingual education to its ELLs, the result may be that the qualified bilingual teacher must be laid off while their position is filled by an elementary teacher who may well not be certified to teach bilingual education. If the teacher who fills the position is not certified to teach that position, the only recourse the district has is to bring a section 3020-a proceeding to terminate the teacher for not being qualified. If a single bilingual tenure area were established, which would require statutory change at the elementary level, abolition of a position in that tenure area could have a similar anomalous result. For example, if a bilingual tenure area is established, the least senior teacher may be the only teacher available in the district who is fluent in Chinese, and the teacher retained may be a bilingual teacher fluent in another language. If multiple language-specific tenure areas were established, which would also require statutory change at the elementary level, the result would be very narrow tenure areas with limited protection for teachers.

A similar situation may arise in the case of teaching assistants. There is a single tenure area for teaching assistants, so if the least senior teaching assistant is a teaching assistant fluent in Chinese or Urdu and is hired to assist a teacher in providing native language instruction to students who are speakers of those languages, that teaching assistant must be laid off. The result can be that the district is forced to assign a teaching assistant who does not speak those languages and is not able to provide the needed support in the students' native language. If a bilingual/ESOL teaching assistant tenure area were established, a similar result could obtain if a position is abolished in that tenure area.

The Solution:

SED supports enactment of legislation to require districts, in the event of an abolition of a position, to excess the teacher/teaching assistant with the least seniority in the tenure area of the position abolished, except where the retention of a less senior teacher/teaching assistant fluent in a specific language is necessary for the school district to provide required bilingual/ESOL instruction.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 208, 215, 305, 2117, 2854(1)(b) and 3204

Part 154 of the Regulations of the Commissioner of Education is amended, effective October 1, 2014, as follows:

Part 154

SERVICES FOR PUPILS WITH LIMITED ENGLISH PROFICIENCY

SUBPART 154-1

SERVICES FOR PUPILS WITH LIMITED ENGLISH PROFICIENCY FOR PROGRAMS OPERATED PRIOR TO THE 2015-2016 SCHOOL YEAR

[§154.1] §154-1.1 Scope and applicability of [Part] Subpart.

The purpose of this [Part] Subpart is to establish standards for school districts having [pupils] students with limited English proficiency (hereinafter “English Language Learners”) to assure that such [pupils] students are provided opportunities to achieve the same educational goals and standards [as the general student population] that have been established by the Board of Regents for all students. In accordance with the provisions of this [Part] Subpart, each school district shall provide [pupils with limited English proficiency] English Language Learners equal access to all school programs and services offered by the district, commensurate with [their ages] the student’s age and grade level, including access to programs required for graduation. The provisions of this Subpart shall apply to programs operated beginning with the 2007-2008 school

year and prior to the 2015-2016 school year, except as otherwise provided in this Subpart. Notwithstanding the provisions of this Subpart, a school district that operates such program may choose to implement one or more provisions of Subpart 154-2 in the 2014-2015 school year, provided that such district submits to the Commissioner for approval a plan in such format and pursuant to such timeline as the Commissioner may prescribe and that such plan indicates which provisions of each Subpart will be implemented in the 2014-2015 school year.

[§154.2] §154-1.2 Definitions. As used in this Subpart:

(a) Pupils with limited English proficiency (or “English Language Learners”) shall mean [pupils] students who by reason of foreign birth or ancestry, speak a language other than English and:

- (1) either understand and speak little or no English; or
- (2) score below a State designated level of proficiency, on the Language Assessment Battery-Revised (LAB-R) prior to February 1, 2014, or on the New York State Identification Test for English Language Learners (NYSITELL) commencing February 1, 2014 and thereafter, or on the New York State English as a Second Language Achievement Test (NYSESLAT); provided, however, that no [pupil] student shall be served in a bilingual or English as a second language education program pursuant to this [Part] Subpart for a period in excess of three years from the date of enrollment in school unless such period is extended by the commissioner with respect to an individual [pupil] student in accordance with the provisions of subdivision 2 of section 3204 of the Education Law.

(b) Initial identification is the process followed to determine if the [pupil] student is limited English proficient, at the time of [a pupil's] the student's enrollment in the New York State public school system for the first time or at the time of [a pupil's] the student's reentry into the New York State public school system with no available record of prior screening, based upon such [pupil] student scoring below a State designated level of proficiency on the LAB-R prior to February 1, 2014, or on the NYSITELL commencing February 1, 2014 and thereafter.

(c) Annual English language assessment is the process followed to determine if a [pupil] student with limited English proficiency continues to be limited English proficient, based upon such [pupil] student scoring below a State designated level of proficiency on the NYSESLAT.

(d) For grades kindergarten through 12, free-standing English as a second language program shall mean a program of instruction composed of two components: a language arts instructional component and a content area instructional component. Such instruction shall take into account the first language and culture of such [pupils] students.

(1) The language arts instructional component shall include English language arts instruction and English as a second language instruction. The learning standards for English language arts (ELA) and English as a second language (ESL), and key ideas and performance indicators for such standards, shall serve as the basis for the ELA and ESL curriculums, respectively.

(i) English language arts instruction shall be provided to students at the advanced level of English language proficiency for a minimum of one unit of study or its equivalent, divided into substantially equal daily allotments of instructional time.

(ii) English as a second language instruction shall be designed to develop skills in understanding, speaking, reading, writing and communicating in English through the integration of academic content appropriate for the pupil's age, grade level and English language skills, and shall be provided in substantially equal daily allotments of instructional time to:

(a) [pupils] students in grades kindergarten through eight at beginning and intermediate levels of English language proficiency for a minimum of two units of study or its equivalent;

(b) [pupils] students in grades kindergarten through eight at advanced levels of English language proficiency for a minimum of one unit of study or its equivalent;

(c) [pupils] students in grades nine through 12 at the beginning level of English language proficiency for a minimum of three units of study or its equivalent;

(d) [pupils] students in grades nine through 12 at intermediate levels of English language proficiency for a minimum of two units of study or its equivalent;

(e) [pupils] students in grades nine through 12 at an advanced level of English language proficiency for a minimum of one unit of study or its equivalent.

(2) The content area instructional component shall provide grade and age level appropriate instruction in the required content area subjects in English supported by English as a second language methodologies, employed in a systematic and structured

way, and shall be designed to develop cognitive skills of [limited English proficient pupils] English Language Learners.

(e) For grades kindergarten through 12 bilingual education program shall mean a program of instruction composed of two components: a language arts instructional component, and a content area instructional component. Such instruction shall take into account the first language and culture of such [pupils] students.

(1) The language arts instructional component shall include English language arts (ELA) instruction, native language arts (NLA) instruction and English as a second language (ESL) instruction. The learning standards for ELA and ESL, and key ideas and performance indicators for such standards, shall serve as the basis for the NLA and ESL curricula.

(i) English language arts instruction shall be provided to students at the advanced level of English language proficiency for a minimum of one unit of study or its equivalent, divided into substantially equal daily allotments of instructional time.

(ii) English as a second language (ESL) instruction shall be designed to develop skills in understanding, speaking, reading, writing and communicating in English through the integration of academic content appropriate for the [pupil's] student's age, grade level and English language skills. The time requirements for ESL instruction within a bilingual education program shall be the same as those established for the ESL instruction within a free-standing ESL program, as prescribed in subdivision (d) of this section.

(iii) Native language arts instruction shall be provided to students in a bilingual education program for at least one unit of study or its equivalent and shall be provided in substantially equal daily allotments of instructional time.

(2) The content area instructional component shall provide grade and age level appropriate instruction in the required content area subjects in the native language and English, in a systematic and structured way, and shall be designed to develop the cognitive skills of [limited English proficient pupils] English Language Learners.

(f) Exception. A school district, which is subject to a court order or is a party to a preexisting agreement with an appropriate Federal agency requiring programs substantially equivalent to or in excess of those required under these regulations, will not be required to comply with these regulations and will be in compliance with this [Part] Subpart as long as the district implements the court order or agreement and fulfills all other requirements of this [Part] Subpart which are not addressed by such court order or agreement.

[§154.3] §154-1.3 School district [responsibility] responsibilities.

[The provisions of this section shall apply to programs operated in the 2007-2008 school year and thereafter]. All [limited English proficient students] English Language Learners shall be entitled to receive services in accordance with subdivision 2 and [2(a)] 2-a of section 3204 of the Education Law.

(a) Each school district receiving total foundation aid, including each community school district of the City of New York, shall develop a comprehensive plan to meet the educational needs of [pupils with limited English proficiency] students who are English

Language Learners. Such plan shall be kept on file in the district and made available for department review upon request of the department. The plan shall include:

(1) the district's philosophy for the education of such [pupils] students;

(2) administrative practices and procedures to:

(i) diagnostically screen [pupils for limited English proficiency] students who are English Language Learners pursuant to Part 117 of this Title;

(ii) identify such [pupils with limited English proficiency] students who are English Language Learners;

(iii) annually evaluate each such [pupil] student including each such [pupil's] student's performance in content areas to measure the [pupil's] student's academic progress;

(3) a description of the nature and scope of the bilingual and/or English as a second language instructional program and services available to [limited English proficient pupils] students who are English Language Learners;

(4) a description of the criteria used by the district to place [limited English proficient pupils] students who are English Language Learners in appropriate bilingual or free-standing English as a second language programs;

(5) a description by building of the curricular and extracurricular services provided to [pupils with limited English proficiency] students who are English Language Learners;

(6) a description of the district and school level procedures for the management of the program, including staffing, site selection, parental notification, coordination of funds, training and program planning.

(b) School related information shall be distributed to parents or other persons in parental relationship to [pupils with limited English proficiency in English] students who are English Language Learners or when necessary the language they understand.

(c) The school district shall submit to the commissioner the results of the annual evaluation of [limited English proficient pupils] students who are English Language Learners, including test data and any additional data required by the commissioner, in the format and timeframe specified by the commissioner.

(d) The school district shall ensure that the provisions of section 3204 of the Education Law with respect to the instruction of [limited English proficient pupils] students who are English Language Learners are adhered to.

(e) The school district shall refer [limited English proficient pupils] students who are English Language Learners and who are suspected of having a disability to the committee on special education in accordance with Part 200 of this Title and assure that a bilingual multidisciplinary assessment is conducted in accordance with section 200.4(b) of this Title before the committee identifies [pupils with limited English proficiency] students with English Language Learners as having a disability.

(f) The school district shall submit to the commissioner the following documents in a form and by a date specified by the commissioner:

(1) an assurance:

(i) of access to appropriate instructional and support services for such [pupils] students, including guidance programs pursuant to section 100.2(j) of this Title;

(ii) that each such [pupil] student has equal opportunities to participate in all school programs and extracurricular activities as [non-limited English proficient pupils] non-English Language Learners;

(iii) that the minimum ESL and ELA requirements prescribed in section [154.2(d)] 154-1.2(d) of this [Part] Subpart for the freestanding ESL programs are adhered to;

(iv) that the minimum ESL, ELA and NLA requirements prescribed in section [154.2(e)] 154-1.2(e) of this [Part] Subpart for bilingual education programs are adhered to;

(v) that teachers in the district's free-standing ESL and bilingual education programs are appropriately certified pursuant to Part 80 of this Title;

(vi) that the district will comply with the requirements of this [Part] Subpart and the provisions of the Education Law governing programs for [pupils with limited English proficiency] English Language Learners;

(vii) that programs for [limited English proficient pupils] English Language Learners will be administered in accordance with applicable Federal and State law and regulations and the district's comprehensive plan;

(2) a report by building of the number of [pupils] students identified as [being limited English proficient] English Language Learners in the preceding year, including their grade level, native language and instructional program;

(3) a report by building of the number of [limited English proficient pupils] students who are English Language Learners served in the preceding year, including their grade level, native language and instructional program;

(4) a report by building of the number of [pupils] students that took the NYSESLAT in the preceding school year;

(5) a report by building of the number and qualifications of teachers and support personnel providing services to [pupils with limited English proficiency] English Language Learners;

(6) a fiscal report containing such data concerning the preceding school year as may be required by the commissioner; and

(7) beginning in July 2008 and annually thereafter until the 2015-2016 school year, a report on the expenditure of State, local and Federal funds in the prior year on programs, activities and services for pupils with limited English proficiency.

(g) Types of programs.

(1) Bilingual Education Program. Each school district which has an enrollment of 20 or more [pupils with limited English proficiency] students who are English Language Learners of the same grade level assigned to a building, all of whom have the same native language which is other than English, shall provide such [pupils] students with bilingual education programs.

(2) Free-standing English as a Second Language Program. Each school district which has [pupils with limited English proficiency] students who are English Language Learners of the same grade level assigned to a building, but which does not have 20 of such [pupils] students with the same native language which is other than English, shall provide either a free-standing English as a second language program, or a bilingual education program to such [pupils] students.

(h) Support services. Each school district with [limited English proficient pupils] students who are English Language Learners participating in bilingual or free-standing English as a second language programs shall provide appropriate support services needed by such [pupils] students to achieve and maintain a satisfactory level of academic performance. Such services may include, but need not be limited to, individual counseling, group counseling, home visits, and parental counseling. Where appropriate, such services shall be provided in the first language of the [pupil] student and the [pupil's] student's parents or other persons in parental relation to the [pupil] student.

(i) Transitional services. Each school district shall ensure a transition for former [limited English proficient pupils] English Language Learner students transferring from a bilingual or free-standing English as a second language program into an English mainstream program. Transitional services shall be provided for the first year after the [pupil] student is placed in the English mainstream instructional program.

(j) In-service training. Each school district with [limited English proficient pupils] English Language Learner students shall provide in-service training to all personnel providing instruction or other services to such [pupils] students in order to enhance their appreciation for the [pupils'] student's native languages and cultures and their ability to provide appropriate instructional and support services.

(k) Parental notification.

(1) The parents or other persons in a parental relation to a [pupil designated as limited English proficient] student identified as an English Language Learner shall be

notified, in English and the language they understand, of their child's placement in an instructional bilingual or free-standing English as a second language program and their options as set forth in paragraphs (2) and (3) of this subdivision. School districts offering programs to [limited English proficient pupils] students who are English Language Learners shall make an effort to meet with the parents or other persons in parental relation to such [pupils] students, at least twice a year, to help them understand the goals of the program and how they might help their children.

(2) The parents or other persons in parental relation to a [pupil] student designated as limited English proficient shall have the option to withdraw their child only from participation in an instructional bilingual education program, provided that:

(i) the parents or other persons in parental relation to a [pupil designated as limited English proficient] student identified as an English Language Learner meet with the school principal along with the school or district supervisor of bilingual education to discuss and explain further the nature, purposes, educational values of the program and the skills required of personnel;

(ii) as a minimum such [pupil] student shall participate in a free-standing English as a second language program.

(3) In a school building where the number of eligible [pupils] students 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] student identified as a an English Language Learner 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.

(4) Parents or other persons in parental relation to a [pupil designated as limited English proficient] student identified as an English Language Learner who is a new entrant, as defined in section 117.2(d) of this Title, shall be provided an orientation session on the State standards, assessments, school expectations and general program requirements for the bilingual education program and the free-standing English as a second language program. Such orientation shall take place within the first semester of their child's enrollment in the school and, when needed, shall be provided in the first language of the pupil's parents or other persons in parental relation to the [pupil] student.

(l) A [pupil] student whose score on the LAB-R prior to February 1, 2014, or on the NYSITELL commencing February 1, 2014 and thereafter, or on the NYSESLAT, as specified in section [154.2(a), (b) and (c)] 154-1.2(a), (b) and (c) of this [Part] Subpart, is a result of a disability shall be provided special education programs and services in accordance with the individualized education program (IEP) developed for such [pupil] student pursuant to Part 200 of this Title, and shall also be eligible for services pursuant to this [Part] Subpart when such services are recommended in the IEP. A [pupil] student with a disability receiving services in accordance with the provisions of this section shall be counted as [a pupil with limited English proficiency] an English Language Learner, as well as a student with a disability, for purposes of calculating State aid pursuant to section 3602 of the Education Law.

SUBPART 154-2

SERVICES FOR ENGLISH LANGUAGE LEARNERS FOR PROGRAMS OPERATED IN THE 2015-2016 SCHOOL YEAR AND THEREAFTER

154-2.1 Scope of Subpart and applicability.

(a) The purpose of this Subpart is to establish standards for school districts having students with limited English proficiency (hereinafter, "English Language Learners") to assure that such students are provided opportunities to achieve the same educational goals and standards that have been established by the Board of Regents for all students. In accordance with the provisions of this Part, each school district shall provide English Language Learners equal access to all school programs and services offered by the school district, commensurate with the student's age and grade level, including access to programs required for graduation. In addition, in accordance with this Part, each school district shall provide English Language Learners with Bilingual Education or English as a New Language (formerly, English as a Second Language) programs. The provisions of this Subpart shall apply to programs operated beginning with the 2015-2016 school year, except as otherwise provided in this Part.

(b) In order to meet the civil rights requirements applicable to public schools, charter schools shall either implement the provisions of this Part or an alternative language instruction educational program based on scientifically based research and approved by their charter entity.

154-2.2 Definitions. As used in this Subpart and Subpart 154-3:

(a) Annual English language proficiency assessment shall mean the process followed to annually assess the English language proficiency of an English Language Learner using such assessments as determined by the Commissioner. Such assessments shall be among the criteria used to determine if a student continues to be classified as an English Language Learner.

(b) Bilingual Education program shall mean a research-based program comprised of three components: (1) a language arts instruction component, including Home Language Arts and English Language Arts; (2) an English as a New Language component; and (3) a bilingual content area instructional component (including all bilingual content areas, i.e. math, science, and social studies, depending on the Bilingual Education program model and the student's level of English language development, but must at a minimum include at least two bilingual core content areas, i.e. math, science, and social studies).

(c) Continuously enrolled shall mean a student is enrolled from BEDS day to the last day of the annual English language proficiency assessment.

(d) Days shall mean calendar days unless otherwise indicated as school day or business day. School day means any day, including a partial day, that students are in attendance at school for instructional purposes. Business days means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day).

(e) Developing English Language Learners shall mean students who have been identified as English Language Learners under this Part and have received English as a New Language (formerly English as a Second Language) instruction, as a component

of their Bilingual Education or English as a New Language program, for a total of four (4) to six (6) continuously enrolled school years in the United States (the 50 States and the District of Columbia).

(f) English Language Learners shall mean students who, by reason of foreign birth or ancestry, speak or understand a language other than English and speak or understand little or no English, and require support in order to become proficient in English and are identified pursuant to section 154-2.3 of this Subpart; provided, however, that no student shall be served in a Bilingual Education or English as a New Language program pursuant to this Part for a period in excess of three school years from the date of initial enrollment or reentry in a New York State public school unless such period is extended by the commissioner with respect to an individual student in accordance with the provisions of subdivision 2 of section 3204 of Education law.

(g) English Language Learner Subpopulations shall mean Newcomer, Developing, Long-Term and Former English Language Learners, English Language Learners with Disabilities and Students with Inconsistent/Interrupted Formal Education as defined in this section.

(h) English as a New Language program shall mean a research-based program comprised of two components: a content area instructional component in English (including all core content, i.e. English language arts, math, science, or social studies) with home language supports and appropriate scaffolds, and an English language development component (Stand-alone and/or Integrated English as a New Language).

(i) Former English Language Learners shall mean students who had been identified as English Language Learners and subsequently exited from English Language Learner status pursuant to section 154-2.3(m) of this Subpart.

(j) Home Language Arts shall mean a unit of study or its equivalent in Language Arts in the student's home language. Such unit of study shall be aligned to the New York State learning standards for English Language Arts and Literacy and the English Language Arts curriculum of the school district and shall focus on literacy and language development in the home language.

(k) Home Language Questionnaire shall mean a survey, as prescribed by the Commissioner, administered by qualified personnel to determine if a language other than English is spoken at home.

(l) Initial identification shall mean the process followed pursuant to section 154-2.3 to determine if a student is an English Language Learner upon the student's enrollment for the first time in the New York State public school system.

(m) Integrated English as a New Language shall mean a unit in of study or its equivalent in which students receive core content area (i.e., English language arts, math, science or social studies) and English language development instruction.

(n) Long-term English Language Learners shall mean students who have been identified as English Language Learners under this Part and have received English as a New Language (formerly English as a Second Language) instruction, as a component of their Bilingual Education or English as a New Language program, for a total of seven (7) or more continuously enrolled school years in the United States (the 50 States and the District of Columbia).

(o) Newcomer English Language Learners shall mean students who have been identified as English Language Learners under this Part and have received English as a New Language (formerly English as a Second Language) instruction, as a component of their Bilingual Education or English as a New Language program, for a total of zero (0) to three (3) continuously enrolled school years in the United States (the 50 States and the District of Columbia).

(p) Personnel qualified to teach Home Language Arts at the elementary (K-6) level shall mean a teacher, certified pursuant to Part 80 of this Title, who holds a teaching certificate with a bilingual education extension in the home language (other than English). Personnel qualified to teach Home Language Arts in grades 7-12 shall mean a teacher, certified pursuant to Part 80 of this Title, who holds a teaching certificate in Languages Other than English.

(q) Personnel qualified to teach Integrated English as a New Language shall mean a dually certified teacher, certified pursuant to Part 80 of this Title, (i.e., English to Speakers of Other Languages certification and content area certification) or a certified English to Speakers of Other Languages teacher and a certified content area teacher, certified pursuant to Part 80 of this Title, who co-teach a class. In a K-6 bilingual program, as defined in section 154-2.3(h)(3) of this Subpart, personnel qualified to teach Integrated English as a New Language means a common branch K-6 teacher with a bilingual extension, certified pursuant to Part 80 of this Title.

(r) Personnel qualified to teach Stand-alone English as a New Language at the elementary level shall mean a English as a Second Language teacher, certified pursuant to Part 80 of this Title, or, in a K-6 bilingual program, as defined in section 154-

2.3(h)(3) of this Subpart, a certified common branch K-6 teacher with a bilingual extension, certified pursuant to Part 80 of this Title. Personnel qualified to teach Stand-alone English as a New Language in grades 7-12 shall mean a certified teacher of English to Speakers of Other Languages, certified pursuant to Part 80 of this Title.

(s) Proficient student shall mean a student who meets the criteria in section 154-2.3(m) of this Subpart for exiting English Language Learner status.

(t) Qualified interpreter/translator shall mean a person who is fluent in the language in which he or she is communicating and in English, has a demonstrated ability to employ the mode of interpretation appropriate to the given situation (e.g., simultaneous interpretation for hearings or large-group parent meetings), and has received training in specialized issues such as confidentiality and any applicable technical vocabulary. School staff who meet this criteria, such as a bilingual or English to Speakers of Other Languages teacher, certified pursuant to Part 80 of this Title, may be qualified to serve as an interpreter/translator.

(u) Qualified personnel as referred to in section 154-2.3(a) and (b) shall mean:

(1) a bilingual or English to Speakers of Other Languages teacher, certified pursuant to Part 80 of this Title, who is fluent in the home language of the student and parent or person in parental relation, or uses a qualified interpreter/translator of the language or mode of communication the student or parent or person in parental relation best understands, or

(2) a teacher who is certified pursuant to Part 80 of this Title, and has been trained in cultural competency, language development and the needs of English Language Learners, and who is proficient in the home language of the student or parent

or person in parental relation or uses a qualified interpreter/translator of the language or mode of communication the student or parent or person in parental relation best understands.

(v) Reentry identification shall mean the process followed pursuant to section154-2.3 to determine if a student is an English Language Learner who is reenrolling in a New York State public school after not having been enrolled in a New York State public school at any time during the preceding immediate two continuously enrolled school years.

(w) School district shall mean a common, union free, central, central high school, city school district or a charter school implementing the provisions of this Part, provided that, in the case of the city school district of the City of New York, such term shall mean a community school district or New York City superintendency.

(x) Stand-alone English as a New Language shall mean a unit of study or its equivalent in which students receive instruction in order to acquire the English language needed for success in core content courses. A student shall not receive Stand-alone English as a New Language in lieu of core content area instruction.

(y) Students with Inconsistent/Interrupted Formal Education shall mean English Language Learners who have attended schools in the United States (the 50 States and the District of Columbia) for less than twelve months and who, upon initial enrollment in such 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 United States (the 50 States and the District of Columbia).

(z) Superintendent shall mean the superintendent of a school district, or, in the city school district of the City of New York, the chancellor or his/her designee, or, in the case of a charter school implementing the provisions of this Subpart, such person as designated by the charter school board of trustees, other than the charter school principal.

154-2.3 School District Responsibilities.

The provisions of this section shall apply to programs operated in the 2015-16 school year and thereafter. All students who are English Language Learners who are enrolled in districts receiving foundation aid shall be entitled to receive services in accordance with subdivision 2 and 2-a of section 3204 of the Education Law.

(a) *Initial and Reentry Process and Determination of English Proficiency.* Each school district shall implement the following identification process and steps to determine if a student is an English Language Learner upon a student's initial enrollment or reentry in a New York State public school. If, after the completion of any step, it is determined that a student is not an English Language Learner, the remaining steps of the initial enrollment and/or reentry process shall not be completed.

(1) Step 1: Administration of the Home Language Questionnaire by qualified personnel as defined in section 154-2.2(u) to parents or persons in parental relation to determine if a language other than English is spoken at home;

(2) Step 2: An individual interview with the student by qualified personnel in English and the student's home language, and a review of the student's abilities or work samples in reading and writing in English and the home language and math that are

collected or generated during the interview, and for students reentering the New York State public school system, a review of prior experience in home language and/or English instruction, to determine if the student shall be administered the statewide English language proficiency identification assessment and to determine the student's grade level of literacy in their home language and grade level in math;

(3) Step 3: Students who have a disability: Follow a process, as specified in section 154-3.3(a) of this Part, to determine whether the student shall take the statewide English language proficiency identification assessment and whether the student should be identified as an English Language Learner.

(4) Step 4: Administration of a statewide English language proficiency identification assessment as prescribed by the Commissioner, except for such students defined in paragraph (3) of this subdivision for whom it has determined that such assessment is not appropriate.

(5) If the student receives a score below a state designated level of proficiency established by the Commissioner on the statewide English language proficiency identification assessment, or in the case of a student with a disability, the process defined in section 154-3.3(a) has led to a determination that the student shall be identified as an English Language Learner. Within five (5) school days of such identification, the school district must provide the student, if the student is 18 years of age or older, or the student's parent or person in parental relation written notice of such identification determination the right to seek review of such identification determination pursuant to section 154-2.3(b).

(6) If the student is identified as an English Language Learner, and Step 2 in section 154-2.3(a)(2) indicates that the student has attended schools in the United States (the 50 States and the District of Columbia) for less than twelve months and is two or more years below grade level in literacy in their home language and/or math due to inconsistent or interrupted schooling prior to arrival in the United States (the 50 States and the District of Columbia), the student shall also be identified as a Student with Inconsistent/Interrupted Formal Education.

(7) The identification process shall commence no later than the date of the student's initial enrollment or reentry in a New York State school district, except that the statewide English language proficiency identification assessment 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 statewide English language proficiency identification assessment may not be administered before June 1.

(8) Districts must complete all steps of the identification process in this section prior to the student's final placement in a school. A student shall be provisionally placed in a school until the identification process is completed.

(9) If a student is identified as an English Language Learner with a disability pursuant to paragraph (3) of this subdivision, each school district shall ensure that:

(i) Consistent with the requirements in section 200.3 of this Title, that the Committee on Special Education for such students include at least one individual, certified pursuant to Part 80 of this Title, to provide bilingual services or instruction or

teach English to Speakers of Other Languages, who is knowledgeable about the student's English and home language development needs;

(ii) Placement in a Bilingual Education or English as a New Language program pursuant to this Part is not refused solely because the student has a disability; and

(iii) assessment procedures that differentiate between language proficiency and disability are implemented in accordance with sections 200.4(b) and (c) of this Title.

(b) Review of Identification Determination.

(1) A school district shall initiate a review of a determination made in the initial or reentry identification process upon receipt within the first forty-five (45) school days of a student's initial or reentry determination of a written request in such form as may be prescribed by the Commissioner from any of the following:

(i) a student's parent or person in parental relation;

(ii) a student's teacher, if such teacher's request includes written consent from the parent or person in parental relation; or

(iii) a student, if the student is 18 years of age or older.

(2) Upon receipt of a written request, the school principal and qualified personnel, as defined by section 154-2.2(u) of this Subpart, shall:

(i) Review all documents related to the initial or reentry identification process prescribed in paragraph (a) of this subdivision;

(ii) Review the student's work in English and in the home language;

(iii) Consult with the parent or person in parental relation;

(iv) Conduct and review the results of a school-based assessment, administered by qualified personnel as defined by section 154-2.2(u) of this Subpart, of the student's abilities in listening, speaking, reading and writing in English;

(v) If personnel defined by section 154-2.2(p) of this Subpart are available in the district, conduct and review the results of a school-based assessment, administered by qualified personnel as defined by section 154-2.2(u) of this Subpart, of a student's abilities in listening, speaking, reading and writing in their home language; and

(vi) Consult with the Committee on Special Education (CSE) if the student is a student with a disability or is suspected of having a disability that may impact the ability to speak, read, write or listen in English.

(3) The review shall be completed and a determination made within ten (10) school days of the district's receipt of a written request, unless consultation with the CSE is required, in which case a determination shall be made within twenty (20) school days of the district's or the charter school's receipt of a written request.

(4) If, upon review, the school principal determines, based on the recommendation of qualified personnel, that the student designation should change, the principal shall inform the parent or person in parental relation of this recommendation, in the language or mode of communication the parent or other person in parental relation best understands. Upon receipt from the parent or person in parental relation of a signed acknowledgment letter in the language the parent or person in parental relation best understands, the principal shall submit for review and approval a recommendation to change the student's designation to the Superintendent or his or her designee. A

recommendation to change the student's designation shall not be made by the principal if the parent or person in parental relation, or student if the student is 18 years of age or older, does not submit a signed letter of consent in the language the parent or person in parental relation, or student if the student is 18 years of age or older, best understands.

(5) If the school principal recommends that the student designation should change and the parent or person in parental relation consents, the Superintendent, or his or her designee, shall review the school principal's recommendation and make a final determination to accept or reject the principal's recommendation within ten (10) days of receiving the school principal's recommendation. If the Superintendent, or his or her designee, accepts the principal's recommendation the district must inform the Commissioner and the school principal in writing, and the parent or person in parental relation in the language or mode of communication the parent or person in parental relation best understands.

(6) If the Superintendent, or his or her designee, accepts a recommendation determining whether or not an English Language Learner's designation should change, the school principal, no less than six months and no later than one school year following that determination shall review the decision to ensure that the student's academic progress has not been adversely affected by the determination. If the principal, based on the recommendation of qualified personnel and the written consent of the parent or person in parental relation, believes that the student may have been adversely affected by the determination, the school principal shall provide additional

support services to the student as defined in section 154-2.3(j) of this Subpart and may reverse the determination no less than six months and no later than one year from such determination. A reversal of a determination must be made in consultation with the Superintendent or his or her designee. If a reversal of a determination is made, the Superintendent, or his or her designee, must inform the Commissioner and the school principal in writing, and the parent or person in parental relation in the language or mode of communication the parent or person in parental relation best understands.

(7) If a determination is made pursuant to paragraphs (1) through (5) of this subdivision that a student is not an English Language Learner, the designation of such shall be changed in the student's cumulative record and the student shall not be reported as an English Language Learner. If a subsequent decision is made pursuant to paragraph (6) of this subdivision to reverse a determination that a student is not an English Language Learner, the student shall be re-designated as an English Language Learner in the student's cumulative record and the student shall be reported as an English Language Learner.

(c) *Retention of Identification and Review Records.*

(1) Each school district shall maintain in the student's cumulative record information regarding the parent's or person in parental relation's preferred language or mode of communication, as indicated on the Home Language Questionnaire.

(2) Each school district shall maintain all documents related to the initial identification and any subsequent review process, including the Home Language Questionnaire, English language proficiency identification assessment results, and any other records generated as part of the identification process and review process as

defined in paragraphs (a) and (b) of this section. Such information shall be maintained as part of the student' s cumulative record.

(d) *Program Requirements.* Each school district shall provide either a Bilingual Education or English as a New Language program to students identified as English Language Learners. Each school district shall implement Bilingual Education and/or English as a New Language programs with fidelity to the requirements of this Part and in accordance with guidance prescribed by the Commissioner.

(1) *Annual Estimate of Enrollment of English Language Learners by School and Grade.* Each school district shall, by such date before the end of the current school year as determined by the Commissioner, and in such format as determined by the Commissioner, annually prepare and submit to the Commissioner and make widely available through public means, which may include, but not be limited to posting on the Internet, distribution through the media, and distribution through public agencies, an estimate of the number of English Language Learners who are expected to be enrolled in each school and in each grade within each school, as well as the number of English Language Learners in the district who speak the same home language, in the following school year. Such annual estimate shall be based on the previous three years of enrollment data for English Language Learners by school, grade and home language.

(2) Each school district in which the sum of each school's 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.

(3) Each school district shall place any new Bilingual Education programs required by section 154-2.3(d)(2) of this Subpart in a school that has not been identified as a School Under Registration Review or as a Focus or Priority School pursuant to Part 100 of this Title, if such school exists in the district. If a school that has not been so identified does not exist or does not have the physical space for the new Bilingual Education program, the district must submit a justification, in a form and according to such timeline as prescribed by the Commissioner, and receive approval from the Commissioner to place the new Bilingual Education program(s) in a Focus School or in a Priority School if no Focus School exists in the district. In the case of New York City, in the event that a Priority School is the only option for placement of a new Bilingual Education program, the district shall open the program but give parents or persons in parental relation the option to transfer their child to a Bilingual Education program in a school that has not been identified as a School Under Registration Review or as a Focus or Priority School pursuant to Part 100 of this Title in a neighboring community school district. In all such cases where the opportunity to transfer to another school is offered, the student shall be provided transportation in accordance with Education Law section 3635 and/or district policy as applicable.

(4) Each school district that has an Annual Estimate of Enrollment of English Language Learners in which 20 or more English Language Learners of the same grade level assigned to a school, all of whom have the same home language that is other than

English, shall provide such students with a Bilingual Education program at that school in the following school year.

(5) Each English Language Learner shall be provided the opportunity to transfer to another school in the district that operates a Bilingual Education program that serves the same grade level and language, if such Bilingual Education program does not exist in the school in which the student is enrolled. In all such cases where the opportunity to transfer to another school is offered, the student shall be provided transportation in accordance with Education Law section 3635 and/or district policy as applicable.

(6) A district may seek permission on an annual basis from the Commissioner for a one-year exemption from providing Bilingual Education programs required by section 154-2.3(d)(2) in languages that are the home language of less than five percent (5%) of the statewide English Language Learner population. A district may seek permission for such exemption for no more than five (5) consecutive school years, if the district demonstrates that:

(i) the district does not have qualified staff to operate a Bilingual Education program in that language for all eligible students at either the district level or at one or more schools that are required to offer a bilingual program; or

(ii) the district overestimated the number of English Language Learners in that language who would be enrolled in the district or a school who are in the same grade and speak the same home language such that the actual number of such students is fewer than 20.

(7) In order to qualify for a one-year exemption from providing such Bilingual Education program in languages that are spoken by less than five percent (5%) of the

statewide English Language Learner population, a district must submit, in such format and according to such timeline, as may be prescribed by the Commissioner, for approval:

(i) Evidence demonstrating the efforts that the district made to recruit qualified bilingual teachers in the languages that are spoken by less than five percent (5%) of the total statewide English Language Learner population and the plans that the district and the school, as applicable, has for ongoing and intensive efforts to recruit qualified bilingual teachers in that language, or evidence of the number of English Language Learners enrolled in a school by grade and home language and the district class size averages compared to the class size averages that would be required to operate a Bilingual Education program for which an exemption is sought;

(ii) 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, as defined by the Commissioner, and make such home language supports available for all students who would otherwise be enrolled in a Bilingual Education program.

(8) Upon a finding that the district has made adequate efforts to recruit bilingual teachers, has developed a plan to intensify its recruitment efforts, and will implement satisfactory alternate home language supports for students for whom the district would otherwise be required to provide a Bilingual Education program, the Commissioner may grant a one-year exemption to the school district from the requirement to provide a Bilingual Education program.

(9) An English as a New Language program must be provided to all English Language Learners who are not served by a Bilingual Education program.

(10) In instances where the Commissioner has determined that a school district has demonstrated a pattern in its Annual Estimate of Enrollment of English Language Learners of consistent underestimation of enrollment at the district or school level of English Language Learners in the same grade and who spoke the same home language, the Commissioner may direct the school district to establish Bilingual Education programs as the Commissioner deems necessary to ensure that appropriate opportunities to participate in Bilingual Education programs are provided to English Language Learners.

(e) *Program Continuity.* Each district shall provide program continuity such that all students designated as English Language Learners can continue to receive the program type (i.e., Bilingual Education or English as a New Language) in which they were initially enrolled, as long as the students remain designated as English Language Learners and, in the case of a Bilingual Education program, there were at least fifteen (15) students enrolled in a grade in such program in the district the prior school year.

(f) *Parental Notification and Information.*

(1) The parent or other person in parental relation of a student designated as an English Language Learner who is a new entrant, as defined in section 117.2(d) of this Title, shall be provided a high quality orientation session on the state standards, assessments, and school expectations for English Language Learners, as well as the program goals and requirements for Bilingual Education and English as a New Language programs, as prescribed by the commissioner. Such orientation shall occur prior to a student' s enrollment in a program provided that a student shall not be withheld from timely program placement if a parent or person in parental relation does

not attend an orientation session. Such orientation shall be provided in a language or mode of communication that the parent or person in parental relation best understands.

(2) Following such orientation, the parent or other person in parental relation of a student designated as an English Language Learner shall be notified, in English and the language or mode of communication the parent or other person in parental relation best understands, that, where available, Bilingual Education shall be the default program. Such notice must also indicate that a parent or person in parental relation may direct that his or her child be placed in an English as a New Language program if the parent or person in parental relation does not want his or her child to be enrolled in a Bilingual Education program.

(i) The notification shall explain the goals and purpose of Bilingual Education and English as a New Language programs available in the district.

(ii) The notification shall state that the student will receive all required core content in all programs offered, and that participation in a Bilingual Education or English as a New Language program will not restrict the student's access to extracurricular activities offered by the school or district.

(iii) In a school that is not required to provide a Bilingual Education program, parents or persons in parental relation shall be notified of the option of transferring their child to a school within the district, provided such program is available at another school, pursuant to section 154-2.3(d)(5) of this Subpart. In New York City, such notification shall also inform parents or persons in parental relation of the right to transfer to a Bilingual Education program in a school that has not been identified as a School Under Registration Review or as a Focus or Priority School pursuant to section

154-2.3(d)(3) of this Subpart. Such notifications of the right to transfer must also indicate that transportation will be provided to a student who transfers in accordance with Education Law Section 3635 and/or district policy as applicable.

(iv) In a school where the number of eligible students requires that a Bilingual Education program be provided, but the school has been granted an exemption pursuant to section 154-2.3(d)(8) and (9) of this Subpart, the notification must explain how the school will offer to support home language as defined in Section 154-2.3(d)(7)(ii) of this Subpart, and provide a summary of its plans for instituting a Bilingual Education program the following school year.

(3) Upon notification of the parent or person in parental relation, the school district shall provide the parent or person in parental relation five (5) school days to sign and return to the district a statement that the parent or person in parental relation is either in agreement with the child being placed in a Bilingual Education program or directs the district to place the child in an English as a New Language program. If a parent or person in parental relation does not return the signed notification form within five (5) school days of receiving the notice, the student shall be placed in a Bilingual Education program if there is one in the school that serves the grade and home language spoken by the student or in an English as a New Language program if the school is not required to provide a Bilingual Education program. In the event that a parent or person in parental relation does not return the signed notification form within five (5) school days, the parent or person in parental relation shall retain the right to make a final decision regarding the placement of their child in a Bilingual Education or English as a New Language program.

(4) If a student is placed in an English as a New Language program because the parent or person in parental relation requested that the student not be placed in a Bilingual Education program or because the parent or person in parental relation did not make a choice and the school was not required to open a Bilingual Education program pursuant to paragraph (4) of subdivision (d) of section 154-2.3 of this Subpart, the parents or persons in parental relation shall be notified, in a language or mode of communication they best understand, that they retain the right to transfer their child to a Bilingual Education program and that transportation will be provided in accordance with Education Law section 3635 and/or district policy as applicable.

(5) School districts shall individually meet with the parents or persons in parental relation of English Language Learners at least once a year, in addition to parent-teacher conferences, quarterly progress meetings or other such scheduled meetings provided for parents or persons in parental relation of all students, to discuss the goals of the program, their child's language development progress, their child's English language proficiency assessment results, and language development needs in all content areas. This additional meeting shall include all school staff necessary to sufficiently inform the parents or persons in parental relation about the child's language development in all content areas in English and in the child's home language in the case of students enrolled in a Bilingual Education program. Such meeting shall be conducted with a qualified interpreter/translator in the language or mode of communication the parent or person in parental relation best understands. School districts shall determine the manner and form of such individual parent meetings, in accordance with local collective bargaining agreements.

(6) Each school district shall maintain records of signed notices of parents and persons in parental relation that indicate program selection as well as orientation session agendas and sign in sheets for such orientations. In the event that a parent or person in parental relation does not indicate a program choice, such information shall be recorded by the district. All such information must be accessible at all times that school is open for school staff. Signed notices of parents and persons in parental relation that indicate program selection shall be included in the student's cumulative record.

(g) Placement

(1) Except as otherwise provided in this Part, the process for initial enrollment or reentry identification and parent notification, orientation, and placement shall be completed such that a student is placed in either a Bilingual Education or an English as a New Language program within ten (10) school days after the student's initial enrollment or reentry in the school district.

(2) Except as otherwise provided in this Part, the process for initial or reentry identification and parent notification, orientation, and placement shall be completed such that a student is placed in either a Bilingual Education program or an English as a New Language program by the first day of school in September for students identified more than ten (10) business days prior to such date.

(h) Provision of Programs

For purposes of this subdivision, a unit of study and a unit of credit shall be as defined in section 100.1(a) and (b), respectively, of this Title.

(1) English as New Language K-8. Each school district shall provide an English as a New Language program in grades K-8, based on a student's English language proficiency level, as identified by the statewide English language proficiency identification assessment or the annual English language proficiency assessment, as follows:

(i) Beginner/Entering: Students shall receive at least two units of study or its equivalent of English as a New Language instruction. At least one unit of study or its equivalent shall be Stand-alone English as a New Language instruction and at least one unit of study or its equivalent shall be Integrated English as a New Language and English Language Arts instruction.

(ii) Low Intermediate/Emerging: Students shall receive at least two units of study or its equivalent of English as New Language instruction. At least one half of a unit of study or its equivalent shall be in Stand-alone English as a New Language, at least one unit of study or its equivalent shall be Integrated English as a New Language and English Language Arts instruction, and one half of a unit of study or its equivalent shall be either Integrated English as a New Language or Stand-alone English as a New Language instruction.

(iii) Intermediate/Transitioning: Students shall receive at least one unit of study or its equivalent of English as a New Language. At least one half of a unit of study or its equivalent shall be in Integrated English as a New Language and English Language Arts instruction, and at least one half of a unit of study or its equivalent shall be either Integrated English as a New Language or Stand-alone English as a New Language instruction.

(iv) Advanced/Expanding: Students shall receive at least one unit of study or its equivalent of Integrated English as a New Language and English Language Arts or another content area.

(v) Proficient/Commanding: For at least two school years following the school year in which a student is exited from English Language Learner status, as prescribed section 154-2.3(m) of this Subpart, such student shall receive at least one half of one unit of study or its equivalent of Integrated English as a New Language and English Language Arts or another content area, or such other services that monitor and support the student's language development and academic progress, as shall be approved by the Commissioner to assist Former English Language Learners once they have exited from an English as a New Language or Bilingual Education program.

(2) English as a New Language 9-12. Each school district shall, provide an English as a New Language program in grades 9-12, based on a student's English language proficiency level, as identified by the statewide English language proficiency identification assessment or the annual English language proficiency assessment, as follows:

(i) Beginner/Entering: Students shall receive at least three units of study or its equivalent of English as a New Language instruction. At least one unit of study or its equivalent shall be Stand-alone English as a New Language instruction; at least one unit of study or its equivalent shall be Integrated English as a New Language and English Language Arts; and one unit of study or its equivalent shall be either Integrated English as a New Language or Stand-alone English as a New Language instruction. A student shall earn one unit of English Language Arts credit for successful completion of

an Integrated English as a New Language and English Language Arts unit of study, one unit of credit in the content area for successful completion of each Integrated English as a New Language unit of study; and one unit of elective credit for successful completion of a second Stand-alone English as a New Language unit of study.

(ii) Low Intermediate/Emerging: Students shall receive at least two units of study or its equivalent of English as a New Language instruction. At least one half of a unit of study or its equivalent shall be in Stand-alone English as a New Language, at least one unit of study or its equivalent shall be Integrated English as a New Language and English Language Arts instruction, and one half of a unit of study or its equivalent shall be either Integrated English as a New Language or Stand-alone English as New Language instruction. A student shall earn one unit of English Language Arts credit for successful completion of Integrated English as New Language and English Language Arts unit of study or one unit of credit in the content area for successful completion of an Integrated English as a New Language unit of study, or one unit of elective credit for successful completion of Stand-alone English as a New Language unit of study.

(iii) Intermediate/Transitioning: Students shall receive at least one unit of study or its equivalent of English as a New Language Instruction. At least one half of a unit of study or its equivalent shall be in Integrated English as a New Language instruction and at least one half of a unit of study or its equivalent shall be either Integrated English as a New Language instruction or Stand-alone English as a New Language instruction. A student shall earn one unit of English Language Arts credit for successful completion of Integrated English as New Language and English Language Arts unit of study or one unit of credit in the content area for successful completion of an Integrated English as a

New Language unit of study, or one unit of elective credit for successful completion of Stand-alone English as a New Language unit of study.

(iv) Advanced/Expanding: Students shall receive at least one unit of study or its equivalent of Integrated English as New Language instruction. A student shall earn one unit of credit in a content area for successful completion of the Integrated English as a New Language unit of study in a content area other than English Language Arts.

(v) Proficient/Commanding: For at least two school years following the school year in which a student is exited from English Language Learner status, as prescribed in section 154-2.3(m) of this Subpart, such student shall receive at least one half of one unit of study or its equivalent of Integrated English as a New Language or such other services that monitor and support their language development and academic progress, as shall be approved by the Commissioner to assist Former English Language Learners once they have exited from an English as a New Language or Bilingual Education program.

(3) *Bilingual Education Programs.* A Bilingual Education program in grades K-12 shall provide:

(i) Two units of study or its equivalent in Language Arts, one in English and one in the student' s home language. English Language Arts may be provided through Integrated English as a New Language as prescribed in paragraphs (1) and (2) of this subsection. A student shall earn one half credit for each Language Arts unit of study, for a total of one combined total credit for Language Arts each year.

(ii) Content area instruction in the required content area subjects in the home language and in English (including all bilingual core content areas, i.e. math, science,

and social studies, depending on the Bilingual Education program model and the student's level of English language development, but must include a minimum of two bilingual core content areas other than Language Arts taught in both the student's home language and English), in accordance with section 100.1(a) and (b) of this Title.

(iii) English as a New Language instruction, as prescribed in section 154-2.3(h)(1) and (2) of this Subpart.

(i) *Grade Span.* 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.

(i) *Support Services for students not demonstrating adequate performance.* For each English Language Learner who makes below specified levels of performance on the annual English language proficiency assessment, as defined by the Commissioner, the school district shall determine the additional support services to provide the student, taking into consideration evidence such as:

(1) Number of years of instruction in a Bilingual Education or English as a New Language program;

(2) English and home language literacy, content area and socio-emotional support needs of Students with Inconsistent/Interrupted Formal Education;

(3) English and home language literacy needs of Long-term ELLs;

(4) Results on the annual English language proficiency assessment exam;

(5) Bilingual Education or English as a Second language teacher recommendation;

(6) Content area teacher recommendation;

(7) Parent or other person in parental relation request;

(8) Sample of student work in English and, if possible, in their home language;

and

(9) Bilingual educational evaluation, if the student has or is suspected of having a disability.

The support services provided shall be aligned with any intervention plans (e.g., Academic Intervention Services) the school district is already providing to all students.

(k) Professional Development. Each school district shall provide professional development to all teachers and administrators that specifically addresses the needs of English Language Learners. Consistent with section 80-3.6 and section 100.2(dd) of this Title, a minimum of fifteen percent (15%) of the required professional development clock hours for all teachers prescribed by Part 80 of this Title shall be dedicated to language acquisition, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners. For all Bilingual and English as a Second Language teachers, a minimum of fifty (50%) of the required professional development clock hours prescribed by Part 80 of this Title shall be dedicated to language acquisition in alignment with core content area instruction, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners. All school districts must align and integrate such professional development for Bilingual and English as a Second Language teachers with the professional development plan for core content area for all teachers in the district.

(l) Annual Assessment. Each school district with English Language Learners shall annually assess the English language proficiency of each such student using such assessment as prescribed by the Commissioner for this purpose.

(m) Exit Criteria. (1) Each school district will annually determine if a student identified as an English Language Learner will continue to be identified as an English Language Learner. The following criteria shall be used to make a determination to exit a student from English Language Learner status:

(i) Scores at or above a state designated level of proficient/commanding on the annual English language proficiency assessment; or

(ii) Scores at or above a state designated level of advanced/expanding on the annual English language proficiency assessment in all modalities, and at or above proficient on the English Language Arts assessment required pursuant to sections 100.3 and 100.4 of this Title or met or exceeded proficiency standards as defined in section 100.18 of this Title on the Regents Examination in Comprehensive English or the Regents Examination in ELA (Common Core) or an approved alternative.

(2) Students with disabilities. Each school district will annually determine if a student with a disability who is identified as an English Language Learner will continue to be identified as an English Language Learner pursuant to section 154-3.3(b) of this Part

(n) SIFE Status. Students identified as a Student with Inconsistent/Interrupted Formal Education as defined in section 154-2.3(a) of this Subpart shall continue to be identified as such until they are performing at the transitioning/intermediate level on the annual English language proficiency assessment. Once a student is performing at or

above the transitioning/intermediate level on the annual English language proficiency assessment, the student's status as a Student with Inconsistent/Interrupted Formal Education shall be removed by the school district, even though the student may continue to be identified as an English Language Learner. Upon exiting a student from SIFE status, the school district must maintain records that the student was once identified as a SIFE.

154-2.4 School District Assurances and Reporting.

(a) Assurances. Prior to the start of each school year, each school district shall submit to the Commissioner the following assurances, signed by the Superintendent or his or her designee and in a form and by a date specified by the Commissioner:

(1) English Language Learners have access to appropriate instructional and support services, including guidance programs pursuant to section 100.2(j) of this Title;

(2) English Language Learners have equal opportunities to participate in all school programs and extracurricular activities as non-English Language Learners;

(3) English Language Learners are offered Bilingual Education and/or English as a New Language programs, as required by subdivision (h) of section 154-2.3 of this

Subpart;

(4) The district provides the requisite number of Bilingual Education programs as prescribed in section 154-2.3(d) of this Subpart, or has received a one-year exemption under section 154-2.3(d) and is actively recruiting qualified staff for such programs;

(5) Parents or other persons in parental relation of English Language Learners receive orientation and notification about program types, as prescribed in section 154-2.3(f) of this Subpart.

(6) English Language Learners are given the requisite amount of English as a New Language and Home Language Arts instruction as prescribed in section 154-2.3(h) of this Subpart;

(7) Teachers in the district' s Bilingual Education and English as a New Language programs are appropriately certified pursuant to Part 80 of this Title;

(8) Teachers of English Language Learners receive the requisite number of in-service professional development, as prescribed in section 154-2.3(k) of this Subpart and Part 80;

(9) The district will comply with the requirements of this Part and the provisions of the Education Law governing programs for students designated as English Language Learners;

(10) The programs for English Language Learners will be administered in accordance with applicable federal and state law and regulations and the district' s comprehensive plan as described in paragraph (b) of this subdivision.

(b) Plan. Prior to the start of each school year, each school district shall develop a Subpart 154-2 Comprehensive Plan in a form specified by the Commissioner. Such plan shall be submitted to the Commissioner prior to the start of each school year by a date specified by the Commissioner. Each plan shall include the following:

(1) The district's philosophy regarding the education of its English Language Learners, including but not limited to program types offered in the district, including programs, if they exist and/or instructional practices, specifically for subpopulations of English Language Learners (Students with Inconsistent/Interrupted Formal Education, English Language Learners with Disabilities, Newcomer English Language Learners, Developing English Language Learners, Long-Term English Language Learners, and Former English Language Learners), and an explanation of the supporting research for each program as well as the goals and strategies of each program;

(2) The district's administrative practices to screen, identify and place English Language Learner in appropriate programs, as well as identify Students with Inconsistent/Interrupted Formal Education, English Language Learners with Disabilities, Newcomer English Language Learners, Developing English Language Learners, Long-Term English Language Learners, and Former English Language Learners;

(3) The district's plan to provide parents and other persons in parental relation with information about all Bilingual Education and English as a New Language programs available in the district as well as information and notices regarding program placement and the rights of such parents or persons in parental relation, in the language or mode of communication that parents and persons in parental relation best understand;

(4) The district's system to annually measure and track the academic progress and English language proficiency of English Language Learners and use of data to drive instruction;

(5) The district's curricular and extracurricular services provided to English Language Learners;

(6) The district's administrative practices to annually evaluate English Language Learners;

(7) The district's procedure to identify support services for English Language Learners as prescribed in section 154-2.3(i) of this Subpart that are aligned with any intervention plans the school district is already providing to all students, including the district's services, programs and supports, if they exist and/or instructional practices, for Students with Inconsistent/Interrupted Formal Education, English Language Learners with Disabilities, Newcomer English Language Learners, Developing English Language Learners, Long-Term English Language Learners, and Former English Language Learners; and

(8) The district's policies and procedures to refer English Language Learners who are students with disabilities to the Language Proficiency Team (LPT) during the 2015-2016 school year, or to the Committee on Special Education (CSE) during the 2016-2017 school year and thereafter, to make determinations consistent with the requirements of this Subpart.

(9) The district's procedures to exit English Language Learners and Students with Inconsistent/Interrupted Formal Education;

(10) The district's services to support Former English Language Learners, as prescribed in sections 154-2.3(h)(1)(v) and 154-2.3(h)(2)(v).

(c) Reporting. Each school district shall annually submit to the Commissioner a data and information report in such form(s) and pursuant to such timeline(s) prescribed by the Commissioner. The report must include the following:

(1) A summary of the number of ELL students in the district, disaggregated by grade level, home language and by program type;

(2) A report by building of the number of ELL students identified in the preceding school year by grade level, home language and program type;

(3) A report by building of the number of ELL students, if any, who have not received either Bilingual Education or English as a New Language instruction, and the reason such students did not receive such instruction as required by sections 154-2.3(g) and (h) of this Subpart;

(3) A summary of the number of Students with Inconsistent/Interrupted Formal Education, English Language Learners with Disabilities, Newcomer English Language Learners, Developing English Language Learners, Long – Term English Language Learners, and Former English Language Learners by grade level, home language and program type;

(4) A summary of annual English language proficiency assessment, English Language Arts and Mathematics outcomes by subpopulation (Students with Inconsistent/Interrupted Formal Education, English Language Learners with Disabilities, Newcomer English Language Learners, Developing English Language Learners, Long – Term English Language Learners, and Former English Language Learners) by grade level;

(5) A summary of the number and qualifications of teachers and support personnel providing services to ELLs; and

(6) The expenditure of State, local and federal funds in the prior year on programs and services for ELLs.

(7) A summary of all students for whom the district has requested a Request for Extension of Services, as defined in section 154-2.2(f) of this Subpart. Such summary must include the name of all such students, including but not limited to transfer students and graduates from grades six (6), eight (8) or nine (9). Such summary need not include students who scored proficient/commanding on the annual English language proficiency assessment, students discharged from the New York State public school system, students who have graduate from high school, or students enrolled in nonpublic schools.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 208, 215, 305, 2117, 2854(1)(b) and 3204

Subpart 154-3 of the Regulations of the Commissioner of Education is added, effective October 1, 2014, as follows:

SUBPART 154-3

IDENTIFICATION AND EXIT PROCEDURES FOR STUDENTS WITH DISABILITIES FOR ENGLISH LANGUAGE LEARNER PROGRAMS OPERATED IN THE 2015-2016 SCHOOL YEAR AND THEREAFTER

154-3.1 Scope of Subpart and applicability.

The provisions of this Subpart shall apply to students with disabilities who are subject to the initial and reentry process and determination of English proficiency pursuant to section 154-2.3(a) of this Part and the exit procedures pursuant to section 154-2.3(m) of this Part in programs operated beginning with the 2015-2016 school year and thereafter. Except as otherwise provided in this Subpart, all other provisions of Subpart 154-2 of this Part shall apply to students with disabilities who are English Language Learners in programs operated beginning with the 2015-2016 school year.

154-3.2 Definition.

Language Proficiency Team (LPT) shall mean a committee that makes a determination regarding the initial identification of English Language Learner status for a student with a disability and exiting a student with a disability from English Language Learner status. The LPT shall be minimally 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, certified pursuant to Part 80 of this Title; the director of special education or individual in a comparable title (or his or her designee); and the student's parent or person in parental relation. A qualified interpreter or translator of the language or mode of communication the parent or person in parental relation best understands, as defined in section 154-2.2(t) of this Part, shall be present at each meeting of the LPT.

154-3.2 Determination of whether a student with a disability shall take the statewide English language proficiency identification assessment.

(a) Initial and Reentry Process for Determination of English Proficiency. For students with disabilities who are subject to the initial and reentry process and determination of English proficiency pursuant to section 154-2.3(a) of this Part, following the administration of Steps 1 and 2 and prior to the administration of Step 3 pursuant to section 154-2.3(a) of this Part, the following provisions shall apply:

(1) During the 2015-16 school year, for a student identified as having a disability, a Language Proficiency Team (LPT), as defined in section 154-3.2 of this subpart, shall individually determine whether the student shall take the statewide English language proficiency identification assessment and whether the student should be identified as an English Language Learner.

(i) In making this determination, the LPT shall, in accordance with guidance prescribed by the Commissioner, consider evidence of the student's English language development, including, but not limited to:

(a) the results of Steps 1 and 2 in section 154-2.3(a)(1) and (2) of this Part;

(b) the student's history of language use in school and home or community;

(c) the individual evaluation of the student conducted in accordance with the procedures in section 200.4(b)(6) of this Title, which shall include assessments administered in the student's home language; and

(d) information provided by the Committee on Special Education (CSE) as to whether the student's disability is the determinant factor affecting whether the student can demonstrate proficiency in English.

(ii) Based on the evidence reviewed in subparagraph (i) of this paragraph, the LPT must determine whether the disability is the determinant factor affecting whether the student can demonstrate proficiency in English and whether the student should take the English language proficiency identification assessment. If the LPT determines that the student should not take the English language proficiency identification assessment, the LPT shall also recommend, based on the evidence reviewed in subparagraph (i) of this subdivision, whether the student should be identified as an English Language Learner, and if so, their level of English language proficiency.

(iii) If, upon review, the school principal determines, based on the recommendation of the LPT, that the student is or is not an English Language Learner, the school principal shall inform the parent or person in parental relation of this recommendation, in the language or mode of communication the parent or person in parental relation best understands.

(iv) Upon receipt of a recommendation by the school principal as to whether the student is or is not an English Language Learner, the Superintendent or his or her designee shall review the school principal's recommendation and make a final determination to accept or reject the school principal's recommendation within ten (10)

days of receiving the school principal's recommendation. If the Superintendent determines that the student is not an English Language Learner, notice of such determination shall be provided to the parent or person in parental relation in the language or mode of communication the parent or person in parental relation best understands within five (5) days of such final determination.

(2) Beginning in the 2016-2017 school year and thereafter, the CSE shall individually determine whether the student shall take the statewide English language proficiency identification assessment. In making this determination, the CSE shall, in accordance with guidance prescribed by the Commissioner, consider evidence of the student's English language development, including, but not limited to:

(i) the results of Steps 1 and 2 in section 154-2.3(a)(1) and (2) of this Part;

(ii) the student's history of language use in school and home or community;

(iii) the individual evaluation of the student conducted in accordance with the procedures in section 200.4(b)(6) of this Title, which shall include assessments administered in the student's home language; and

(iv) information provided by the parent or person in parental relation, teacher and related services providers as to whether the student's disability is the determinant factor affecting whether the student's ability to demonstrate English proficiency. In such cases, the CSE must include at least one individual who is knowledgeable about the student's English language development and is certified, pursuant to Part 80 of this Title, to provide bilingual services or instruction or as a teacher of English to Speakers of Other Languages. The CSE may determine that additional evaluations or

assessments of the student are necessary in order to appropriately make this determination.

(b) Exit Criteria for Students with Disabilities. For students with disabilities who have been identified as English Language Learners pursuant to section 154-3.2 of this subpart, determination of whether the student will exit English Language Learner status, pursuant to section 154-2.3(m) of this Part, the following provisions shall apply:

(1) During the 2015-2016 school year, if a parent or person in parental relation, teacher or related services provider indicates to school personnel that the student's disability is likely the determinant factor affecting the student's ability to meet any of the criteria in section 154-2.3(m)(1) of this Part, the Language Proficiency Team (LPT), as defined in section 154-3.2(a) of this subpart, shall meet to make an individual determination as to whether the student should continue to be identified as an English Language Learner.

(i) In making this determination, the LPT shall, in accordance with guidance prescribed by the Commissioner, consider evidence of the student's English language development, including, but not limited to:

(a) the results of existing individual evaluations of the student which were administered in the student's home language and in English;

(b) the student's history of language use in school and home/community;

(c) classroom progress monitoring data and the results of the student's State assessments in English language arts;

(d) whether the student's individualized education program has identified services needed by the student in consideration of the student's English language development needs; and

(e) other data and information provided by the student's teacher(s), related services providers, parent or person in parental relation and Committee on Special Education (CSE) as to whether the student's disability was the determinant factor as to why the student did not meet the criteria in section 154-2.3(m)(1) of this Part. The LPT may also determine that additional evaluations or assessments of the student are necessary in order to appropriately make its determination.

(ii) Based on the consideration of evidence reviewed in subparagraph (i) of this paragraph, the LPT may determine that the student with a disability is no longer an English Language Learner and should be exited from English Language Learner status, subject to review by the school principal and superintendent; provided, however, that such determination shall not be based on reasons such as limited availability of qualified personnel or services pursuant to this Subpart, scheduling difficulties to meet the student's special education needs, or costs.

(iii) If, upon review, the school principal determines, based on the recommendation of the LPT, that the student is or is not an English Language Learner, the school principal shall inform the parent or person in parental relation of this recommendation, in the language or mode of communication the parent or person in parental relation best understands.

(iv) Upon receipt from the parent or person in parental relation of a signed consent letter, in the language or mode of communication the parent or person in

parental relation best understands, the principal shall submit for review and approval a recommendation regarding the student's English Language Learner status to the Superintendent or his or her designee. A recommendation to the Superintendent shall not be made by the principal if the parent or person in parental relation does not submit a signed letter of consent, in the language or mode of communication the parent or person in parental relation best understands.

(v) Upon receipt of a recommendation by the school principal of the English Language Learner status to the Superintendent, the Superintendent or his or her designee shall review the school principal's recommendation and make a final determination to accept or reject the principal's recommendation within ten (10) days of receiving the school principal's recommendation.

(2) Beginning with the 2016-2017 school year and thereafter, if a parent or person in parental relation, teacher or related service provider indicates to school personnel that the student's disability is likely the determinant factor as to why the student did not meet the criteria in section 154-2.3(m)(1) of this Part, the Committee on Special Education (CSE), shall individually determine whether the disability is the determinant factor affecting whether the student can demonstrate proficiency in English.

(i) In making this determination, the CSE shall, in accordance with guidance prescribed by the Commissioner, consider evidence of the student's English language development including, but not limited to:

(a) the results of existing individual evaluations of the student which were administered in the student's home language and in English;

(b) the student's history of language use in school and home or community;

(c) classroom progress monitoring data and the results of the student's State assessments in English language arts;

(d) whether the student's individualized education program has identified services needed by the student in consideration of the student's English language development needs; and

(e) other data and information provided by the student's teacher(s), related service providers, and/or parent or person in parental relation, as to whether the student's disability was the determinant factor as to why the student did not meet the criteria in section 154-2.3(m)(1) of this Part. The CSE may also determine that additional evaluations or assessments of the student are necessary in order to appropriately make its determination.

(ii) Based on the evidence reviewed in subparagraph (i) of this paragraph, the CSE may determine that the student with a disability is no longer an English Language Learner and should be exited from English Language Learner status; provided, however, that such determination shall not be based on reasons such as limited availability of qualified personnel or services pursuant to this Part, scheduling difficulties to meet the student's special education needs, or costs.