



Our Students. Their Moment.

# Ensuring Equal Educational Opportunities for English Language Learners

## Enhance and Strengthen Commissioner's Regulations Part 154



# JUNE 2013 GRADUATION RATES

## Graduation under Current Requirements (Completion)

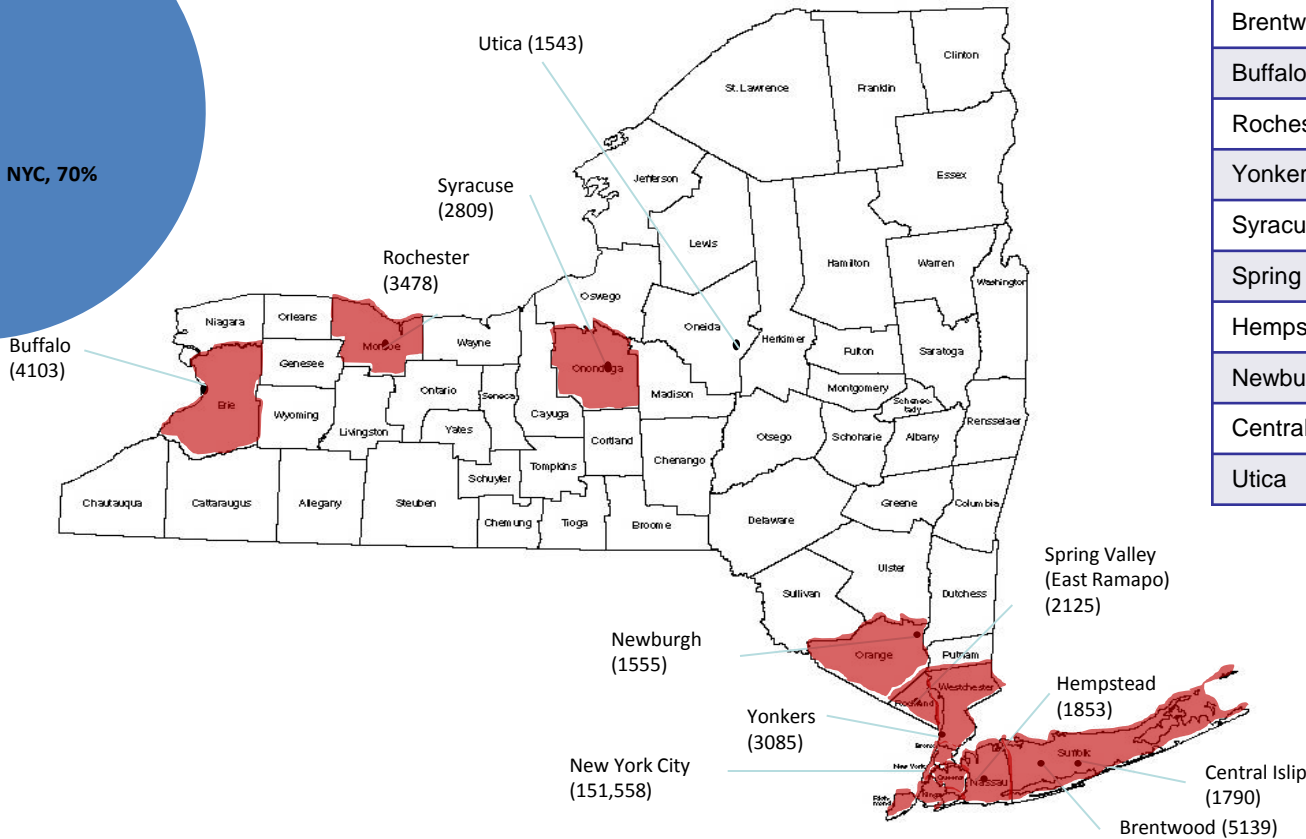
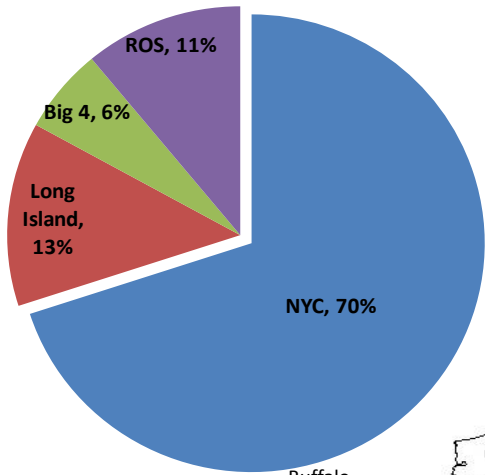
	% Graduating
<b>All Students</b>	74.9
American Indian	62.2
Asian/Pacific Islander	80.6
Black	59.7
Hispanic	59.2
White	86.5
<b>English Language Learners</b>	<b>31.4</b>
Students with Disabilities	48.7

## Calculated College and Career Ready\* (Readiness)

	% Graduating
<b>All Students</b>	37.2
American Indian	21.3
Asian/Pacific Islander	57.2
Black	14.2
Hispanic	18.0
White	50.4
<b>English Language Learners</b>	<b>5.9</b>
Students with Disabilities	5.4

\*Students graduating with at least a score of 75 on Regents English and 80 on a Math Regents, which correlates with success in first-year college courses.

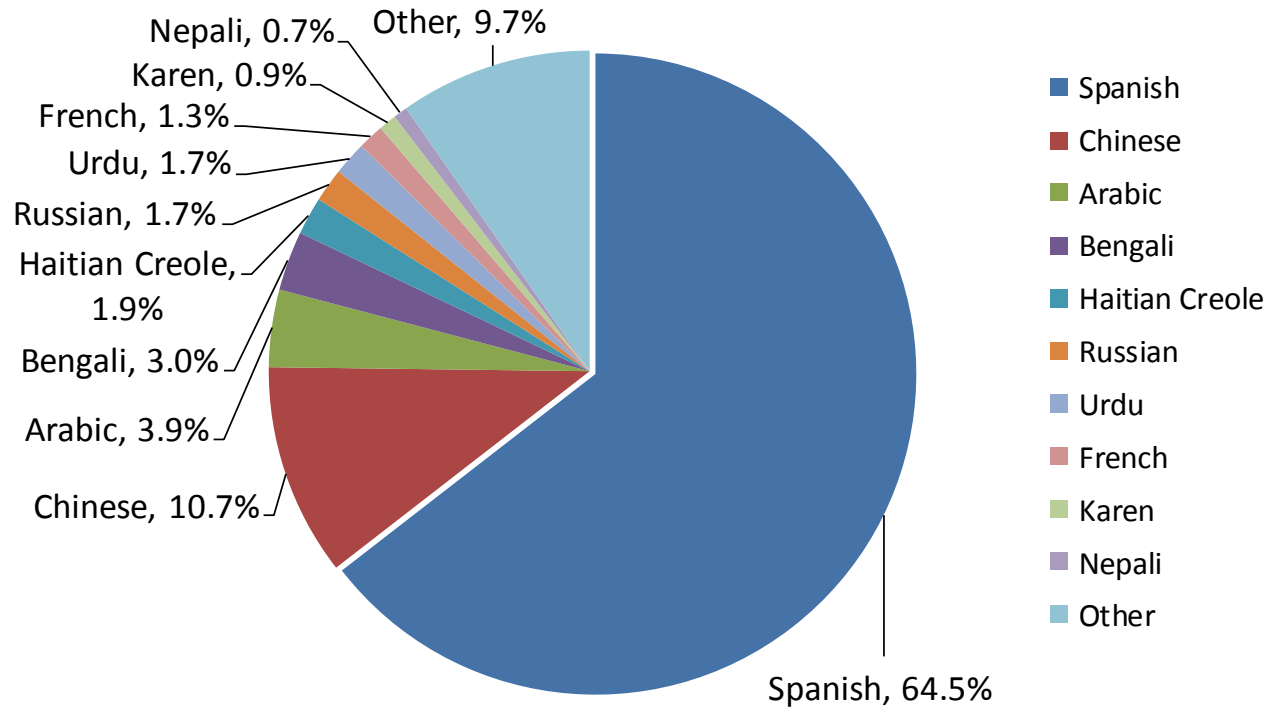
# NEW YORK STATE DEMOGRAPHICS



Top ELL Districts	# of ELLs
New York City	151,558
Brentwood	5,139
Buffalo	4,103
Rochester	3,478
Yonkers	3,085
Syracuse	2,809
Spring Valley	2,125
Hempstead	1,853
Newburgh	1,555
Central Islip	1,790
Utica	1,543

# NEW YORK STATE DEMOGRAPHICS

## 2012-13 Top 10 ELL Home Languages



**Linguistically diverse state with over 140 languages spoken by our students.**

# 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 1500 respondents)**
  - **Review of Draft Recommendations by key stakeholders**
  - **Review of Draft Recommendations by US DOJ, US OCR, USDE Title I, USDE Title III**
  - **Review of Draft Recommendations by members of the Board of Regents**

# PROCEDURAL HISTORY

- 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 US DOJ to review the draft recommendations.
- In April 2014, the Board of Regents was presented 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.
- In May 2014, a proposal for amendments to Part 154 of the Commissioner's Regulations was presented to the Board for discussion.

# AREAS OF PROPOSED AMENDMENTS

- ❑ Identification
- ❑ Parent Notification and Information
- ❑ Retention of Records
- ❑ Placement
- ❑ Program Requirements and Provision of Programs
- ❑ Program Continuity
- ❑ Exit Criteria
- ❑ Support Services and Transitional Services
- ❑ Professional Development and Certification
- ❑ Graduation Requirements
- ❑ District Planning and Reporting Requirements

# IDENTIFICATION

EXISTING REGULATION/GUIDANCE	PROPOSED REGULATORY CHANGE	TIMELINE
<p>A three step ELL identification process by school staff, including:</p> <ul style="list-style-type: none"> <li>(1) administration of the Home Language Questionnaire;</li> <li>(2) an informal individual interview with the student; and</li> <li>(3) the administration of a statewide English language proficiency identification assessment.</li> </ul> <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"> <li>(1) administration of the Home Language Questionnaire;</li> <li>(2) an individual interview with the student;</li> <li>(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</li> <li>(4) the administration of a statewide English language proficiency identification assessment.</li> </ul> <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</p> <p>Planning / Optional Implementation</p> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>2015-2016</p> <p>Full Implementation</p> </div>



# IDENTIFICATION cont...

EXISTING REGULATION/GUIDANCE	PROPOSED REGULATORY CHANGE	TIMELINE
<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 and principal and superintendent approval are required before a change in determination is made.</p>	<p>2014-2015</p> <p>Planning / Optional Implementation</p> <div data-bbox="1669 853 1901 1033" style="border: 1px solid black; padding: 5px; margin-top: 20px;"> <p>2015-2016</p> <p>Full Implementation</p> </div>

# PARENT NOTIFICATION AND INFORMATION

EXISTING REGULATION/GUIDANCE	PROPOSED REGULATORY CHANGE	TIMELINE
<p>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.</p>	<p>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 with parents their child's academic content and language development progress and needs.</p>	<p>2014-2015 Planning / Optional Implementation</p> <p>2015-2016 Full Implementation</p>

## RETENTION OF RECORDS

<p>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.</p>	<p>Districts shall collect and maintain:</p> <ul style="list-style-type: none"> <li>records indicating parent's preferred language or mode of communication; and</li> <li>records of notices and forms generated during the identification and placement process in ELL student's cumulative record.</li> </ul>	<p>2014-2015 Planning / Optional Implementation</p> <p>2015-2016 Full Implementation</p>
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# PLACEMENT

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

## PROGRAM REQUIREMENTS & PROVISION OF PROGRAMS

<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> <ol style="list-style-type: none"> <li>(1) Integrated ESL (ESL methodologies in content area instruction co-taught or taught by a dually certified teacher); and</li> <li>(2) Stand-alone (ESL instruction with an ESL teacher to develop the English language needed for academic success).</li> </ol>	<p>2014-2015</p> <p>Planning / Optional Implementation</p> <p>2015-2016</p> <p>Full Implementation</p>
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# PROGRAM REQUIREMENTS & PROVISION OF PROGRAMS

EXISTING REGULATION/GUIDANCE	PROPOSED REGULATORY CHANGE	TIMELINE
<p>Current regulations require each school with 20 or more ELL students of the same grade who speak the same home language to provide a Bilingual Education program.</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>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>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>A district will be allowed to apply for a one-year waiver for languages that represent less than 5% of the statewide ELL population, if the district can demonstrate it meets established criteria and provides 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</p> <p>Planning / Optional Implementation</p> <div data-bbox="1669 853 1901 1033" style="border: 1px solid black; padding: 5px; text-align: center;"> <p>2015-2016</p> <p>Full Implementation</p> </div>

# GRADE SPAN AND PROGRAM CONTINUITY

EXISTING REGULATION/GUIDANCE	PROPOSED REGULATORY CHANGE	TIMELINE
<p>Current regulations do not address program continuity or grade span.</p>	<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 15 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>	<p>2014-2015</p> <p>Planning / Optional Implementation</p> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>2015-2016</p> <p>Full Implementation</p> </div>

## EXIT CRITERIA

<p>Current regulations only allow students to exit ELL status through one criteria: (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> <ol style="list-style-type: none"> <li>(1) scoring proficient on the statewide English language proficiency assessment;</li> <li>(2) a combination of NYSESLAT scores and 3-8 ELA assessment or ELA Regents scores; or</li> <li>(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.</li> </ol>	<p>2014-2015</p> <p>Planning / Optional Implementation</p> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>2015-2016</p> <p>Full Implementation</p> </div>
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# SUPPORT AND TRANSITIONAL SERVICES

EXISTING REGULATION/GUIDANCE	PROPOSED REGULATORY CHANGE	TIMELINE
<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>	<p>2014-2015</p> <p>Planning / Optional Implementation</p>
<p>Current state and federal guidance calls for districts to provide one to two years of transitional supports to ELLs who exit out of ELL status (former ELLs).</p>	<p>Districts shall provide at least two years of transitional supports to ELLs who exit out of ELL status (former ELLs).</p>	<p>2015-2016</p> <p>Full Implementation</p>

# PROFESSIONAL DEVELOPMENT AND CERTIFICATION

EXISTING REGULATION/GUIDANCE	PROPOSED REGULATORY CHANGE	TIMELINE
<p>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.</p>	<p>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.</p>	<p>2014-2015</p> <p>Planning / Optional Implementation</p>
<p>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.</p>	<p>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.</p>	<p>2015-2016</p> <p>Full Implementation</p>

# DISTRICT PLANNING AND REPORTING

EXISTING REGULATION/GUIDANCE	PROPOSED REGULATORY CHANGE	TIMELINE
<p>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.</p>	<p>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.</p>	<p>2014-2015</p> <p>Planning / Optional Implementation</p>
<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>	<p>2015-2016</p> <p>Full Implementation</p>



# PROFESSIONAL DEVELOPMENT AND CERTIFICATION

EXISTING REGULATION/GUIDANCE	PROPOSED REGULATORY CHANGE	TIMELINE
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.	Create certification areas for bilingual teaching assistants and tenure and seniority protection areas for bilingual teaching assistants, bilingual teachers and ESL teachers.	Requires statutory change and regulatory amendments to Part 80.
Current regulations do not require prospective teachers to complete coursework on ELL instructional needs, language acquisition and cultural competency.	Require that all prospective teachers complete coursework on ELL instructional needs, language acquisition and cultural competency.	Regulatory amendments to section 52.21 will be forthcoming.

## GRADUATION REQUIREMENTS

Current regulations do not allow for additional graduation requirement options for ELLs who enter the United States in 9 <sup>th</sup> grade or above.	Allow for additional graduation requirement options, only for ELLs who enter the United States in 9th grade or above, including: <ul style="list-style-type: none"> <li>• 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.</li> <li>• Scoring 65 or higher on all Regents except the ELA, and scoring 55-64 on the ELA to appeal and receive a local diploma.</li> </ul>	Regulatory amendments to Part 100.5 will be forthcoming.
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# COST ANALYSIS

- The Department has developed a cost analysis to demonstrate potential impact of the proposed amendments to Part 154.
- Cost analysis includes hypothetical districts (a large urban district and a small suburban district) and the potential cost implications on each. These are included in the Additional Information section, attached.
- Cost analysis should be viewed in the context of existing funding sources that districts receive to support their ELL students:
  - All districts receive a .5 additional weighting in the foundation aid formula. This .5 weighting was added in 2008 to account for increased costs associated with providing services for ELLs.
  - Title III funding
  - Contracts for Excellence funding

# COST ANALYSIS: Overview

- The proposed regulations contain provisions that will likely result in implementation costs for many districts. The proposed regulations also contain provisions that will result in cost savings to almost all districts. Other provisions of the regulations are likely to have little, if any, impact on districts costs.
- The degree to which the regulations in totality will result in a net increase in district costs or overall cost savings will depend on a number of factors that will vary widely from district to district, including but not limited to:
  - The number of ELL's in the districts, the languages they speak, and the schools and grades in which they are enrolled.
  - The current programs and services that the district offers to ELLs and the decisions that the district makes as to how to meet the requirements of the proposed regulations.
  - The provisions of the district's collective bargaining agreements.
  - The program choices that parents make for their children.
  - The extent to which the revised regulatory framework results in students become proficient in English more quickly, thereby reducing the number of long-term ELL's and increasing the percentage of ELL's who graduate on time.

# COST ANALYSIS: Examples

- Significant factors in determining the fiscal implications to the district include the current programs and services offered to ELLs, collective bargaining agreements, and how districts decide to reallocate resources to meet the provision of regulations.
- Example: The proposed regulations would establish an identification process that is likely to be lengthier for some students and which requires that the process be administered by qualified personnel. Whether current staff are qualified and whether existing staff will be reassigned or new staff or contractors hired will determine costs.
- Example: The proposed regulations require schools districts to meet individually at least once a year in addition to parent-teacher conferences and other regularly scheduled meetings to discuss the child's language development progress, results, and needs. Whether there are existing opportunities to meet this requirement and the provisions of the local collective bargaining agreements will determine costs.

# COST ANALYSIS: Potential Additional Costs

- The following provisions of proposed regulations may result in increased incremental costs in many districts:
  - New identification process and use of qualified personnel
  - Review of initial determination process
  - Retention of identification documents
  - Parent notification requirements
  - Parent meeting requirement
  - Professional development requirement
  - Transition service requirement
  - Expanded reporting requirements
- Note: Many districts will be able to reallocate existing resources and personnel to reduce or eliminate costs associated with the above requirements.

# COST ANALYSIS: Anticipated Cost Savings

- The following provisions of proposed regulations may result in cost savings to districts:
  - Costs associated with providing services to students who are incorrectly identified as English language learners.
  - Costs associated with providing English language learner services to students with disabilities who do not need such services.
  - Ability of high school English language learners to earn content area credit while acquiring English proficiency.
  - Ability of English language learners to demonstrate English proficiency through multiple measures.

**Note:** When fully implemented, these regulations should help districts reduce their numbers of long-term English language learners, thereby achieving cost savings to districts.

# COST ANALYSIS: ESL and Bilingual Instruction

- English as a Second language instruction will now more frequently be provided through integrated co-teaching rather than stand-alone classes. To the extent that districts use dually certified ESL teachers to provide content area instruction, districts may achieve cost savings. Integrated models where instruction will be provided jointly by ESL instructors and content areas teachers may cost more, less, or the same depending on how districts structure programs.
- Most districts will not be required to provide additional bilingual programs and will not be affected by these provisions of the regulations.
- Districts newly required to provide bilingual instruction or required to expand their bilingual programs, will incur additional costs in setting up new bilingual classes. They will have associated incremental costs for curriculum and instructional materials

# IMPLICATIONS OF COST ANALYSIS

- ❑ **Costs are hard to predict because the effect of the proposed amendments to Part 154 depend heavily on local demographics and decisions.**
- ❑ **Proposed amendments to Part 154 meet new civil rights requirements and thus districts must adjust funds allocated as needed to meet additional costs that may arise.**
- ❑ **Districts receive additional weighted funding for ELLs and Title III funds. Districts should ensure that those funds are used to meet new requirements in proposed revisions to Part 154.**



# COST ANALYSIS: Summary

- In general, the more robust the programs and services a district currently provides its English language learners, the less likely that these proposed regulations will result in additional cost to districts. Districts that are not fully implementing the current Part 154 regulations are the ones most likely to see the greatest proportional increase in their expenditures for English language learner services.

# TIMETABLE FOR IMPLEMENTATION

- ❑ It is anticipated that a Notice of Proposed Rulemaking will be published in the State Register on July 9, 2014.
- ❑ Proposed amendment will be presented to the P-12 Education Committee for recommendation and to the Full Board for adoption at the September meeting.
- ❑ If adopted at the September Regents meeting, the proposed amendment will become effective on October 1, 2014.

# Additional Information

- **Cost implication models**

# COST ANALYSIS: BILINGUAL PROGRAMS

## DISTRICT A

- Provides ESL programs in grades 3-8 in 63 different schools.
- ESL program requires both content teachers and an ESL teacher.
- In an elementary level bilingual program one bilingual teacher can provide content, ESL instruction and bilingual instruction.
- A secondary level bilingual program requires bilingual content teachers and an ESL teacher.

Grade	# of ELLs who speak Spanish
3	33
4	32
5	24
6	29
7	31
8	35

Proposed regulations would require the district to create a bilingual program for grades 3-8 in one of their 63 schools. The district would not be required to hire an additional teacher at the elementary level and may experience cost savings. At the secondary level the district would need to hire additional teachers to provide a bilingual program in grades 6-8.

### Cost

Elementary	High School
Potential cost savings at elementary level.	2-3 Spanish bilingual education teachers depending on whether they decided to provide a program for each grade or provide a program for two contiguous grades, which would cost between \$117,000 (2 teachers) to \$175,500, (3 teachers) based on an estimate of \$58,500 per teacher.

# COST ANALYSIS: BILINGUAL PROGRAMS

## DISTRICT B

Grade	# of ELLs who speak Spanish
3	25

- Provides bilingual education programs in grades K-2, but does not provide a program in grade 3.
- In grade 3 the district provides an ESL program in three separate schools.
- In an elementary level bilingual program one bilingual teacher can provide content, ESL instruction and bilingual instruction.

Proposed regulations would require the district to create a bilingual program in grade 3. The district would not be required to hire an additional teacher at the elementary level and may experience cost savings.

Cost
Elementary
Potential cost savings at elementary level.

# COST ANALYSIS: INTEGRATED ESL

If a student was a beginner high school aged ELL for two years, and an intermediate high school aged ELL for two years they would only be able to earn a total of 18 credits in four years. The district is required to provide summer school and at least one additional year of instruction in order for the high school aged ELL to receive the 22 credits required for graduation.

Level	Classes	Credits
Beginner	7	4
Intermediate	7	5

In the new proposed regulations that student would take integrated ESL and could earn content area credit, and could earn elective credit for stand-alone ESL classes. Thus the new rule would allow the student to receive a full 7 credits per year. Such student would be able to earn 22 credits within four years of high school.

## District A:

Large urban district, \$16,000 per ELL. In a large urban district with 4,617 ELLs and 1,237 ELLs in high school, the new rule would potentially save the district \$19,792,000.

## District B:

Small suburban district, \$20,800 per ELL. In a small suburban district with 1,225 ELLs and 213 ELLs in high school, the new rule would potentially save the district \$4,430,400.

# COST ANALYSIS: EXIT CRITERIA

In the proposed regulations, a student could be exited from ELL status if they are proficient on the 3-8 ELA exam or ELA regents and advanced on the NYSESLAT exam. Last year, 3% of ELLs were proficient on the 3-8 ELA exam. Such students would be eligible to exit from ELL status.

## District A

In a large urban district with 162,780 ELLs and 91,157 ELLs in grades K-5, the district could potentially exit 2,734 students from ELL status. Assuming an average class size of 25 students, this would mean 109 less ESL classes in the district. Based on the yearly rate for a teacher this is a potential cost saving of \$6,376,500.

## District B

In a small suburban district with 1550 ELLs and 992 ELLs in grades K-5, the district could potentially exit 30 students from ELL status. Assuming an average class size of 25 students, this would mean 109 less ESL classes in the district. Based on the yearly rate for a teacher this is a potential cost saving of \$58,500.