



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents

FROM: Cosimo Tangorra, Jr. *Cosimo Tangorra Jr.*

SUBJECT: Proposed Amendments to Subpart 154-2 of the Commissioner's Regulations

DATE: December 8, 2014

AUTHORIZATION(S): *Richard A. Trentacosta* *John B. P. G.*

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents amend §§154-2.3 and 154-2.4 to allow parents an additional five days to return to the school district the signed notification form regarding student placement, to permit school districts to apply for a waiver of the professional development requirements addressing the needs of English Language Learners under certain circumstances, and to enact certain technical amendments to §§154-2.3(f)(3) and 154-2.3(k)?

Reason(s) for Consideration

Implementation of Policy.

Proposed Handling

The proposed amendment is being presented to the Full Board for action at the December Regents meeting.

Procedural History

The proposed amendment was discussed by the P-12 Education Committee at the September 2014 Regents meeting. A Notice of Proposed Rule Making was

published in the State Register on October 8, 2014 for a 45-day public comment period. A copy of the proposed amendment and an Assessment of Public Comment are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

The proposed amendment is the result of further consideration by the Department of: (1) the need to provide parents with additional time to return to the district the signed notification form regarding their child's placement in a Bilingual Education or English as a New Language program, and (2) the need to provide districts with an option for flexibility in the manner in which they provide professional development addressing the needs of English Language Learners.

The proposed amendment to §§154-2.3 and 154-2.4 would:

- Afford parents ten school days, rather than five school days, to sign and return to the district a statement that the parent 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; and
- Under certain circumstances, allow school districts to apply for a waiver of the requirement that a minimum of 15% of the required professional development clock hours for all teachers and a minimum of 50% of the required professional development clock hours for all Bilingual and English as a Second Language teachers be dedicated to certain areas related to the needs of English Language Learners. School districts in which English Language Learners make up less than five percent of the district's total student population could apply for the waiver on an annual basis. School districts would apply for a waiver in a format and timeline as may be prescribed by the Commissioner, and would be required to submit evidence that all teachers, including Bilingual and English as a Second Language teachers, receive training in specific areas sufficient to meet the needs of the district's English Language Learner students.
- Enact certain technical amendments to section 154-2.3(a)(5) to add a clarifying reference to "initial" identification, and to section 154-2.4(b)(8) to replace language referring to specific procedures originally proposed in new Subpart 154-3 that are being separately revised with a generic reference to requiring consistency with Subpart 154-3.

Summary of Comment

The only comments received during the public comment period were from the New York State Association for Bilingual Education (NYSABE). Overall, the comments were supportive of the proposed amendment. However, it was recommended that the professional development requirements established for teachers be extended to

clinical/support personnel (i.e., school psychologists, guidance counselors, social workers) who must be prepared to assist in the identification and assessment of, or provide instructional support to, ELLs/bilingual learners with disabilities under recently promulgated Part 154-3. The Department will consider this recommendation for a possible future rulemaking.

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That paragraph (5) of subdivision (a), paragraph (3) of subdivision (f), and subdivision (k) of section 154-2.3 of the Regulations of the Commissioner of Education, and paragraph (8) of subdivision (b) of section 154-2.4 of the Regulations of the Commissioner of Education, be amended as submitted, effective December 31, 2014.

Timetable for Implementation

If adopted at the December Regents meeting, the proposed amendment will take effect on December 31, 2014.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

1. Paragraph (5) of subdivision (a) of section 154-2.3 is amended, effective December 31, 2014, as follows:

(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 Subpart 154-3 has led to a determination that the student shall be initially 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).

2. Paragraph (3) of subdivision (f) of section 154-2.3 is amended, effective December 31, 2014, as follows:

(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)~~] ten (10) 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)~~] ten (10) 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)] ten (10) 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.

3. Subdivision (k) of section 154-2.3 is amended, effective December 31, 2014, as follows:

(k) Professional Development. Each school district shall provide professional development to all teachers and administrators that specifically addresses the needs of English Language Learners.

(1) 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.

(2) A school district may seek permission on an annual basis from the commissioner for an exemption from the professional development requirements of this subparagraph where English Language Learner students make up less than five percent (5%) of the district's total student population. A district seeking permission for such exemption shall submit to the commissioner for approval an application, in such format and according to such timeline as may be prescribed by the commissioner, that includes:

(i) evidence that, as part of the required professional development clock hours prescribed by Part 80 of this Title, all teachers receive training, sufficient to meet the needs of the district's English Language Learner students, in language acquisition, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners; and

(ii) evidence that, as part of the required professional development clock hours prescribed by Part 80 of this Title, all Bilingual and English as a Second Language teachers receive training, sufficient to meet the needs of the district's English Language Learner students, in 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.

4. Paragraph (8) of subdivision (b) of section 154-2.4 of the Regulations of the Commissioner of Education is amended, effective December 31, 2014, as follows:

(8) The district's policies and procedures [to refer] regarding 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] are consistent with the requirements of this Subpart and Subpart 154-3 of this Title.

8 NYCRR §§154-2.3 & 154-2.4

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on October 8, 2014, the State Education Department (“the Department”) received the following comments:

1. COMMENT:

Supports the proposed amendment to sections 154-2.3 (f)(3) and 154-2.3(k) to afford parents ten school days, rather than five school days as originally proposed, to sign and return to the school district the notification form indicating that the parent 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/English as a second language program.

DEPARTMENT RESPONSE:

No response is necessary as the comment is supportive.

2. COMMENT:

Supports the proposed amendment to section 154-2.3(k) to allow, under certain circumstances specified in the regulation, school districts to request a waiver to the requirement that a minimum of 15% of the required professional development clock hours for all teachers and a minimum of 50% of the required professional development clock hours for all bilingual and English as a second language teachers be dedicated to the education of ELLs/bilingual learners.

DEPARTMENT RESPONSE:

No response is necessary as the comment is supportive.

3. COMMENT:

Recommends that the professional development requirements established for teachers be extended to clinical/support personnel (e.g., school psychologists, guidance counselors, social workers) who must be prepared to assist in the identification and assessment of, or provide instructional support to, ELLs/bilingual learners with disabilities.

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed rule making, which is only intended to amend section 154-2.3(k) of the Commissioner's Regulations to allow school districts to request a waiver to the professional development requirements, under certain specified circumstances. The professional development requirements for teachers and administrators in section 154-2.3(k) were adopted at the September 2014 Regents meeting as part of a separate rule making that enacted a new Subpart 154-2 (State Register, October 1, 2014; EDU-27-14-00011-A). However, the Department will consider the comment's recommendation to extend the professional development requirements to clinical/support personnel for a possible future rulemaking.