





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:** Ken Slentz 

**SUBJECT:** Proposed amendment of §§154.2 and 154.3 of the Regulations of the Commissioner relating to Examination Requirements for Identifying Pupils with Limited English Proficiency

**DATE:** January 6, 2014

**AUTHORIZATION(S):** 

#### SUMMARY

##### Issue for Decision (Consent Agenda)

Should the Board of Regents amend §§154.2 and 154.3 of the Commissioner's Regulations to specify the New York State Identification Test for English Language Learners (NYSITELL), for purposes of identifying pupils with limited English proficiency?

##### Reason(s) for Consideration

Implementation of policy.

##### Proposed Handling

The proposed amendment will be submitted to the Full Board for action at the January 2014 Regents meeting.

## **Procedural History**

The proposed amendment was discussed by the P-12 Education Committee at the October 2013 Regents meeting. A Notice of Proposed Rule Making was published in the State Register on November 6, 2013. A copy of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

## **Background Information**

The proposed amendment specifies a new test, the New York State Identification Test for English Language Learners (NYSITELL), for purposes of identifying pupils with limited English proficiency. Specifically, the proposed amendment provides that "pupils with limited English proficiency" shall include pupils who by reason of foreign birth or ancestry, speak a language other than English and score below a State designated level of proficiency on the Language Assessment Battery-Revised (LAB-R) prior to February 1, 2014, or on the NYSITELL commencing February 1, 2014 and thereafter, or on the New York State English as a Second Language Achievement Test (NYSESLAT).

## **Recommendation**

Staff recommends that the Regents take the following action:

VOTED: That section 154.2 and subdivision (l) of section 154.3 of the Commissioner's Regulations be amended, as submitted, effective February 1, 2014.

## **Timetable for Implementation**

If adopted at the January 2014 Regents meeting, the proposed amendment will become effective on February 1, 2014.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 208, 215, 305, 2117 and 3204

1. Section 154.2 of the Regulations of the Commissioner of Education is amended, effective February 1, 2014, as follows:

154.2 Definitions.

(a) Pupils with limited English proficiency shall mean pupils who by reason of foreign birth or ancestry, speak a language other than English and:

(1) . . .

(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 shall be served in a bilingual or English as a second language education program pursuant to this Part 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 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 is limited English proficient, at the time of a pupil's enrollment in the New York State public school system for the first time or at the time of a pupil's reentry into the New York State public school system with no available record of prior screening, based upon

such pupil 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 with limited English proficiency continues to be limited English proficient, based upon such pupil scoring below a State designated level of proficiency on the NYSESLAT.

(d) . . .

(e) . . .

(f) . . .

2. Subdivision (l) of section 154.3 of the Regulations of the Commissioner of Education is amended, effective February 1, 2014, as follows:

(l) A pupil 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) of this Part, 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 pursuant to Part 200 of this Title, and shall also be eligible for services pursuant to this Part when such services are recommended in the IEP. A pupil with a disability receiving services in accordance with the provisions of this section shall be counted as a pupil with limited English proficiency, as well as a student with a disability, for purposes of calculating State aid pursuant to section 3602 of the Education Law.