

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,

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

(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 Ne1 0 0ETBT1 0 0 1

(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



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

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(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





(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

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)

(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

recommendation to









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

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 p

(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



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 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 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 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.

(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 und

(6) Each school district shall maintain records

(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 in 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 in 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.



(iv) Advanced/Expanding: Students shall receive at least one unit of study or its equivalent of Integrated English as a New Language in 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 in 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 in 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



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 for successful completion of the Integrated English as a New Language unit of

(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). Beginner/entering and low intermediate/emerging students must receive a minimum of two



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 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 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 English Language Learner students, in

instruction, including a focus on best practices for co-teaching strategies and integrating language and content instruction for English Language Learners.

(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

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 opportunitie(1)



(5) Parents or other persons in

(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

(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;

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(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

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

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