

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 215, 2117, 3204, 3602 and 3713

Part 154 of the Regulations of the Commissioner of Education is amended, effective May 2, 2003, as follows:

PART 154

APPORTIONMENT AND SERVICES FOR PUPILS WITH LIMITED ENGLISH

PROFICIENCY

154.1 Scope of Part.

The purpose of this Part is to establish standards for school districts having pupils with limited English proficiency to assure that such pupils are provided opportunities to achieve the same educational goals and standards as the general student population. In accordance with the provisions of this Part, each school district shall provide pupils with limited English proficiency equal access to all school programs and services offered by the district commensurate with their ages and grade level, including access to programs required for graduation.

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) 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) or the New York State English as a Second Language Achievement

Part 154 Regulations, as amended by the Board of Regents on July 17, 2003 and effective May 2, 2003. The official copy of the approved Regulations will be disseminated as soon as it is published in the State Register.

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.

(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) For grades kindergarten through twelve, 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.

(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 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 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 in grades nine through twelve at the beginning level of English language proficiency for a minimum of three units of study or its equivalent;

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

(e) pupils in grades nine through twelve 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.

(e) For grades kindergarten through twelve, 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.

(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 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 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.

(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 as long as the district implements the court order or agreement and fulfills all other requirements of this Part which are not addressed by such court order or agreement.

154.3 Board of education responsibility.

Each board of education, including the board of each community school district of the city of New York, shall:

(a) adopt and implement a written policy concerning the education of pupils with limited English proficiency which shall include:

(1) its philosophy for the education of such pupils;

(2) administrative practices and procedures to:

(i) diagnostically screen pupils for limited English proficiency pursuant to Part 117 of this Title;

(ii) identify such pupils with limited English proficiency;

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

(3) an assurance of access to appropriate instructional and support services for such pupils, including guidance programs pursuant to section 100.2(j) of this Title;

(4) an assurance that each such pupil has equal opportunities to participate in all school programs and extracurricular activities as non-limited English proficient pupils; and

(5) a description of the nature and scope of the instructional programs and services currently available to limited English proficient pupils to help them acquire English proficiency;

and

(b) submit to the commissioner the following documents in the form and by the dates prescribed by the commissioner:

(1) a copy of such written policy;

(2) a report by building of the number of pupils initially identified as being limited English proficient and the number of limited English proficient pupils served in the preceding school year;

(3) a report by building of the number of pupils annually evaluated as being limited English proficient in the preceding school year;

(4) a report by building of the number and qualifications of teachers and support personnel providing services to pupils with limited English proficiency; and

(5) a description by building of the curricular and extracurricular services provided to pupils with limited English proficiency;

(c) distribute to the parents, or other persons in parental relation to pupils with limited English proficiency, school related information in English or when necessary the language they understand;

(d) submit to the commissioner the results of the annual evaluation of limited English proficient pupils, including test data and any additional data required by the commissioner, in the format specified by the commissioner; and

(e) refer limited English proficient pupils, 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 as having a disability.

154.4 District comprehensive plan and program requirements for districts claiming State aid for the operation of programs for pupils with limited English proficiency.

The provisions of this section shall apply to programs operated in the 1990-91 school year and thereafter and shall be the basis for aid payable in the 1991-92 school year and thereafter. In such districts, all limited English proficient students shall be entitled to receive services in accordance with subdivisions 2 and 2-a of section 3204 of the Education Law in a bilingual education or free-standing English as a second language program.

(a) In order to qualify for State aid for instruction provided to pupils with limited English proficiency, a school district, in addition to meeting the requirements of section 154.3 of this Part shall:

(1) submit to the department a district comprehensive plan to meet the educational needs of pupils with limited English proficiency. Such plan shall be submitted no later than September first of each year, and, in addition to the reporting requirements of section 154.3(b) of this Part, shall include a report of the number of limited English proficient pupils served, and a proposed budget for the operation of a State aided program. The plan shall:

- (i) set forth the information and assurances specified in section 154.3 of this Part;
- (ii) specify the criteria used by the district to place limited English proficient pupils in appropriate bilingual or free-standing English as a second language programs;
- (iii) provide a description of the nature and scope of the bilingual and/or English as a second language services currently available to limited English proficient pupils;
- (iv) include an evaluation plan outlining the time schedule for data collection, approved assessment devices or techniques, and time schedule for the submission of data to the department in the format specified by the department;

(v) provide 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; and

(vi) provide an assurance that the district shall comply with the requirements of this Part and of the provisions of the Education Law governing programs for pupils with limited English proficiency and State aid for such programs; and

(2) ensure that the provisions of section 3204 of the Education Law with respect to the instruction of limited English proficient pupils are adhered to.

(b) Types of programs. (1) Bilingual Education Program. Each school district which has an enrollment of 20 or more pupils with limited English proficiency 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 with bilingual education programs.

(2) Free-standing English as a Second Language Program. Each school district which has pupils with limited English proficiency of the same grade level assigned to a building, but which does not have 20 of such pupils 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.

(c) Support services. Each school district with limited English proficient pupils participating in bilingual or free-standing English as a second language programs shall provide appropriate support services needed by such pupils 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 and the pupil's parents or other persons in parental relation to the pupil.

(d) Transitional services. Each school district shall ensure a transition for former limited English proficient pupils 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 is placed in the English mainstream instructional program. Such pupils shall not be counted for purposes of limited English proficiency aid.

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

(f) Parental notification. (1) The parents or other persons in a parental relation to a pupil designated as limited English proficient 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 shall make an effort to meet with the parents or other persons in parental relation to such pupils, 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 designated as limited English proficient shall have the option to withdraw their child 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 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 shall participate in a free-standing English as a second language program.

(3) In a school building where the number of eligible pupils 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 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 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.

(g) No later than September 1st of each year, each school district eligible for State aid for services provided to pupils with limited English proficiency in the preceding school year shall submit, in addition to the data required pursuant to sections 154.3 and 154.4 of this Part, a fiscal

report containing such information as the commissioner may prescribe, including but not limited to:

(1) the number of pupils with limited English proficiency served;

(2) an accounting of the expenditure of limited English proficiency aid to supplement the basic program for such pupils; and

(3) an evaluation of the results obtained from the limited English proficiency aid provided to the district.

(h) The commissioner shall provide an annual report to the Board of Regents.

(i) A pupil whose score on the LAB-R or 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 served for the purposes of computing limited English proficiency aid as well as being counted for public excess cost aid for children with disabilities.