

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, each school district shall provide English Language Learners equal access to all school programs and services offered by the school district, commensurate with the student's age and grade level, including access to programs required for graduation. In addition, in accordance with this Part, each school district shall provide English Language Learners with Bilingual Education or English as a New Language (formerly, English as a Second Language) programs. The provisions of this Subpart shall apply to programs operated beginning with the 2015-2016 school year, except as otherwise provided in this Part.

(b) In order to meet the civil rights requirements applicable to public schools, charter schools shall either implement the provisions of this Part or an alternative language instruction educational program based on scientifically based research and approved by their charter entity.

154-2.2 Definitions. As used in this Subpart and Subpart 154-3:

(a) Annual English language proficiency assessment shall mean the process followed to annually assess the English language proficiency of an English Language 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 Language Arts and English Language Arts; (2) an English as a New Language component; and (3) a bilingual content area instructional component (including all bilingual 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, but must at a minimum include at least two bilingual core content areas, i.e. math, science, and social studies).

(c) Continuously enrolled shall mean a student is enrolled from BEDS day to the last day of the annual English language proficiency assessment.

(d) Days shall mean calendar days unless otherwise indicated as school day or business day. School day means any day, including a partial day, that students are in attendance at school for instructional purposes. Business days means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day).

(e) Developing 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 four (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 New Language program pursuant to this Part for a period in excess of three school years from the date of initial enrollment or reentry in a New York State public school unless such period is extended by the commissioner with respect to an individual student in accordance with the provisions of subdivision 2 of section 3204 of Education law.

(g) English Language Learner Subpopulations shall mean Newcomer, Developing, Long-Term and Former English Language Learners, English Language Learners with Disabilities and Students with Inconsistent/Interrupted Formal Education as defined in this section.

(h) English as a New Language program shall mean a research-based program comprised of two components: a content area instructional component in English (including all core content, i.e. English language arts, math, science, or social studies) with home language supports and appropriate scaffolds, and an English language development component (Stand-alone and/or Integrated English as a New Language).

(i) Former English Language Learners shall mean students who had been identified as English Language Learners and subsequently exited from English Language Learner status pursuant to section 154-2.3(m) of this Subpart.

(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 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 zero (0) to three (3) continuously enrolled school years in the United States (the 50 States and the District of Columbia).

(p) Personnel qualified to teach Home Language Arts at the elementary (K-6) level shall mean a teacher, certified pursuant to Part 80 of this Title, who holds a teaching certificate with a bilingual education extension in the home language (other than English). Personnel qualified to teach Home Language Arts in grades 7-12 shall mean a teacher, certified pursuant to Part 80 of this Title, who holds a teaching certificate in Languages Other than English.

(q) Personnel qualified to teach Integrated English as a New Language shall mean a dually certified teacher, certified pursuant to Part 80 of this Title, (i.e., English to Speakers of Other Languages certification and content area certification) or a certified English to Speakers of Other Languages teacher and a certified content area teacher, certified pursuant to Part 80 of this Title, who co-teach a class. In a K-6 bilingual program, as defined in section 154-2.3(h)(3) of this Subpart, personnel qualified to teach Integrated English as a New Language means a common branch K-6 teacher with a bilingual extension, certified pursuant to Part 80 of this Title.

(r) Personnel qualified to teach Stand-alone English as a New Language at the elementary level shall mean a English as a Second Language teacher, certified pursuant to Part 80 of this Title, or, in a K-6 bilingual program, as defined in section 154-2.3(h)(3) of this Subpart, a certified common branch K-6 teacher with a bilingual extension, certified pursuant to Part 80 of this Title. Personnel qualified to teach Stand-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 the criteria in section 154-2.3(m) of this Subpart for exiting English Language Learner status.

(t) Qualified interpreter/translator shall mean a person who is fluent in the language in which he or she is communicating and in English, has a demonstrated ability to employ the mode of interpretation appropriate to the given situation (e.g., simultaneous interpretation for hearings or large-group parent meetings), and has received training in specialized issues such as confidentiality and any applicable technical vocabulary. School staff who meet this criteria, such as a bilingual or English to Speakers of Other Languages teacher, certified pursuant to Part 80 of this Title, may be qualified to serve as an interpreter/translator.

(u) Qualified personnel as referred to in section 154-2.3(a) and (b) shall mean:

(1) a bilingual or English to Speakers of Other Languages teacher, certified pursuant to Part 80 of this Title, who is fluent in the home language of the student and parent or person in parental relation, or uses a qualified interpreter/translator of the language or mode of communication the student or parent or person in parental relation best understands, or

(2) a teacher who is certified pursuant to Part 80 of this Title, and has been trained in cultural competency, language development and the needs of English Language Learners, and who is proficient in the home language of the student or parent or person in parental relation or uses a qualified interpreter/translator of the language or mode of communication the student or parent or person in parental relation best understands.

(v) Reentry identification shall mean the process followed pursuant to section 154-2.3 to determine if a student is an English Language Learner who is reenrolling in a New York State public school after not having been enrolled in a New York State public school at any time during the preceding immediate two continuously enrolled school years.

(w) School district shall mean a common, union free, central, central high school, city school district or a charter school implementing the provisions of this Part, provided that, in the case of the city school district of the City of New York, such term shall mean a community school district or New York City superintendency.

(x) Stand-alone English as a New Language shall mean a unit of study or its equivalent in which students receive instruction in order to acquire the English language needed for success in core content courses. A student shall not receive Stand-alone English as a New Language in lieu of core content area instruction.

(y) Students with Inconsistent/Interrupted Formal Education shall mean English Language Learners who have attended schools in the United States (the 50 States and the District of Columbia) for less than twelve months and who, upon initial enrollment in such schools are two or more years below grade level in literacy in their home language and/or two or more years below grade level in Math due to inconsistent or interrupted schooling prior to arrival in the United States (the 50 States and the District of Columbia).

(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 school principal.

154-2.3 School District Responsibilities.

The provisions of this section shall apply to programs operated in the 2015-16 school year and thereafter. All students who are English Language Learners who are enrolled in districts receiving

foundation aid shall be entitled to receive services in accordance with subdivision 2 and 2-a of section 3204 of the Education Law.

(a) Initial and Reentry Process and Determination of English Proficiency. Each school district shall implement the following identification process and steps to determine if a student is an English Language Learner upon a student's initial enrollment or reentry in a New York State public school. If, after the completion of any step, it is determined that a student is not an English Language Learner, the remaining steps of the initial enrollment and/or reentry process shall not be completed.

(1) Step 1: Administration of the Home Language Questionnaire by qualified personnel as defined in section 154-2.2(u) to parents or persons in parental relation to determine if a language other than English is spoken at home;

(2) Step 2: An individual interview with the student by qualified personnel in English and the student's home language, and a review of the student's abilities or work samples in reading and writing in English and the home language and math that are collected or generated during the interview, and for students reentering the New York State public school system, a review of prior experience in home language and/or English instruction, to determine if the student shall be administered the statewide English language proficiency identification assessment and to determine the student's grade level of literacy in their home language and grade level in math;

(3) Step 3: Students who have a disability: Follow a process, as specified in Subpart 154-3 of this Part, to determine whether the student shall take the statewide English language proficiency identification assessment and whether the student should be identified as an English Language Learner.

(4) Step 4: Administration of a statewide English language proficiency identification assessment as prescribed by the Commissioner, except for such students defined in paragraph (3) of this subdivision for whom it has determined that such assessment is not appropriate.

(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 of this Part has led to a determination that the student shall be 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). 29

(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 on Special Education for such students include at least one individual, certified pursuant to Part 80 of this Title, to provide bilingual services or instruction or 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) of this subdivision;
- (ii) Review the student's work in English and in the home language;
- (iii) Consult with the parent or person in parental relation;
- (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 student's abilities in listening, speaking, reading and writing in their home language; and
- (vi) Consult with the Committee on Special Education (CSE) if the student is a student with a disability or is suspected of having a disability that may impact the ability to speak, read, write or listen in English.

(3) The review shall be completed and a determination made within ten (10) school days of the district's receipt of a written request, unless consultation with the CSE is required, in which case a determination shall be made within twenty (20) school days of the district's or the charter school's receipt of a written request.

(4) If, upon review, the school principal determines, based on the recommendation of qualified personnel, that the student designation should change, the principal shall inform the parent or person in parental relation of this recommendation, in the language or mode of communication the parent or other person in parental relation best understands. Upon receipt from the parent or person in parental relation of a signed acknowledgment letter in the language the parent or person in parental relation best understands, the principal shall submit for review and approval a recommendation to change the student's designation to the Superintendent or his or her designee. A recommendation to change the student's designation shall not be made by the principal if the parent or person in parental relation, or student if the student is 18 years of age or older, does not submit a signed letter of consent in the language the parent or person in parental relation, or student if the student is 18 years of age or older, best understands.

(5) If the school principal recommends that the student designation should change and the parent or person in parental relation consents, the Superintendent, or his or her designee, shall review the school principal's recommendation and make a final determination to accept or reject the principal's recommendation within ten (10) days of receiving the school principal's recommendation. If the Superintendent, or his or her designee, accepts the principal's recommendation the district must inform the Commissioner and the school principal in writing, and the student, if the student is 18 years of age or older, or the parent or person in parental

relation in the language or mode of communication the parent or person in parental relation best understands.

(6) If the Superintendent, or his or her designee, accepts a recommendation determining whether or not an English Language Learner's designation should change, the school principal, no less than six months and no later than one school year following that determination shall review the decision to ensure that the student's academic progress has not been adversely affected by the determination. If the principal, based on the recommendation of qualified personnel and the written consent of the parent or person in parental relation, believes that the student may have been adversely affected by the determination, the school principal shall provide additional support services to the student as defined in section 154-2.3(j) of this Subpart and may reverse the determination no less than six months and no later than one year from such determination. A reversal of a determination must be made in consultation with the Superintendent or his or her designee. If a reversal of a determination is made, the Superintendent, or his or her designee, must inform the Commissioner and the school principal in writing, and the student, if the student is 18 years of age or older, or the parent or person in parental relation in the language or mode of communication the parent or person in parental relation best understands.

(7) If a determination is made pursuant to paragraphs (1) through (5) of this subdivision that a student is not an English Language Learner, the designation of such shall be changed in the student's cumulative record and the student shall not be reported as an English Language Learner. If a subsequent decision is made pursuant to paragraph (6) of this subdivision to reverse a determination that a student is not an English Language Learner, the student shall be re-designated as an English Language Learner in the student's cumulative record and the student shall be reported as an English Language Learner.

(c) Retention of Identification and Review Records.

(1) Each school district shall maintain in the student's cumulative record information regarding the parent's or person in parental relation's preferred language or mode of communication, as indicated on the Home Language Questionnaire.

(2) Each school district shall maintain all documents related to the initial identification and any subsequent review process, including the Home Language Questionnaire, English language proficiency identification assessment results, and any other records generated as part of the identification process and review process as defined in paragraphs (a) and (b) of this section. Such information shall be maintained as part of the student's cumulative record.

(d) Program Requirements. Each school district shall provide either a Bilingual Education or English as a New Language program to students identified as English Language Learners. Each school district shall implement Bilingual Education and/or English as a New Language programs with fidelity to the requirements of this Part and in accordance with guidance prescribed by the Commissioner.

(1) *Annual Estimate of Enrollment of English Language Learners by School and Grade.* Each school district shall, by such date before the end of the current school year as determined by the Commissioner, and in such format as determined by the Commissioner, annually prepare and submit to the Commissioner and make widely available through public means, which may include, but not be limited to posting on the Internet, distribution through the media, and distribution through public agencies, an estimate of the number of English Language Learners who are expected to be enrolled in each school and in each grade within each school, as well as the number of English Language Learners in the district who speak the same home language, in the following school year. Such annual estimate shall be based on the previous three years of enrollment data for English Language Learners by school, grade and home language.

(2) Each school district in which the sum of each school's Annual Estimate of Enrollment of English Language Learners equals 20 or more English Language Learners of the same grade level, all of whom have the same home language that is other than English, shall provide a sufficient number of Bilingual Education programs in the district in the following school year, such that there are Bilingual Education programs available in the district for at least seventy percent (70%) of the estimated English Language Learners students who share the same home language other than English and grade level districtwide.

(3) Each school district shall place any new Bilingual Education programs required by section 154-2.3(d)(2) of this Subpart in a school that has not been identified as a School Under Registration Review or as a Focus or Priority School pursuant to Part 100 of this Title, if such school exists in the district. If a school that has not been so identified does not exist or does not have the physical space for the new Bilingual Education program, the district must submit a justification, in a form and according to such timeline as prescribed by the Commissioner, and receive approval from the Commissioner to place the new Bilingual Education program(s) in a Focus School or in a Priority School if no Focus School exists in the district. In the case of New York City, in the event that a Priority School is the only option for placement of a new Bilingual Education program, the district shall open the program but give parents or persons in parental relation the option to transfer their child to a Bilingual Education program in a school that has not been identified as a School Under Registration Review or as a Focus or Priority School pursuant to Part 100 of this Title in a neighboring community school district. In all such cases where the opportunity to transfer to another school is offered, the student shall be provided transportation in accordance with Education Law section 3635 and/or district policy as applicable.

(4) Each school district that has an Annual Estimate of Enrollment of English Language Learners in which 20 or more English Language Learners of the same grade level assigned to a school, all of whom have the same home language that is other than 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 to transfer to another school in the district that operates a Bilingual Education program that serves the same grade

level and language, if such Bilingual Education program does not exist in the school in which the student is enrolled. In all such cases where the opportunity to transfer to another school is offered, the student shall be provided transportation in accordance with Education Law section 3635 and/or district policy as applicable.

(6) A district may seek permission on an annual basis from the Commissioner for a one-year exemption from providing Bilingual Education programs required by section 154-2.3(d)(2) in languages that are the home language of less than five percent (5%) of the statewide English Language Learner population. A district may seek permission for such exemption for no more than five (5) consecutive school years, if the district demonstrates that:

(i) the district does not have qualified staff to operate a Bilingual Education program in that language for all eligible students at either the district level or at one or more schools that are required to offer a bilingual program; or

(ii) the district overestimated the number of English Language Learners in that language who would be enrolled in the district or a school who are in the same grade and speak the same home language such that the actual number of such students is fewer than 20.

(7) In order to qualify for a one-year exemption from providing such Bilingual Education program in languages that are spoken by less than five percent (5%) of the 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 percent (5%) of the total statewide English Language Learner population and the plans that the district and the school, as applicable, has for ongoing and intensive efforts to recruit qualified bilingual teachers in that language, or evidence of the number of English Language Learners enrolled in a school by grade and home language and the district class size averages compared to the class size averages that would be required to operate a Bilingual Education program for which an exemption is sought;

(ii) A plan for how the district will provide alternate home language supports in the form of bilingual teacher assistants/aides and/or heritage language programs, as defined by the Commissioner, and make such home language supports available for all students who would otherwise be enrolled in a Bilingual Education program.

(8) Upon a finding that the district has made adequate efforts to recruit bilingual teachers, has developed a plan to intensify its recruitment efforts, and will implement satisfactory alternate home language supports for students for whom the district would otherwise be required to provide a Bilingual Education program, the Commissioner may grant a one-year exemption to the school district from the requirement to provide a Bilingual Education program.

(9) An English as a New Language program must be provided to all English Language Learners who are not served by a Bilingual Education program.

(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 an orientation session. Such orientation shall be provided in a language or mode of communication that the parent or person in parental relation best understands.

(2) Following such orientation, the parent or other person in parental relation of a student designated as an English Language Learner shall be notified, in English and the language or mode of communication the parent or other person in parental relation best understands, that, where available, Bilingual Education shall be the default program. Such notice must also indicate that a parent or person in parental relation may direct that his or her child be placed in an English as a New Language program if the parent or person in parental relation does not want his or her child to be enrolled in a Bilingual Education program.

(i) The notification shall explain the goals and purpose of Bilingual Education and English as a New Language programs available in the district.

(ii) The notification shall state that the student will receive all required core content in all programs offered, and that participation in a Bilingual Education or English as a New

Language program will not restrict the student's access to extracurricular activities offered by the school or district.

(iii) In a school that is not required to provide a Bilingual Education program, parents or persons in parental relation shall be notified of the option of transferring their child to a school within the district, provided such program is available at another school, pursuant to section 154-2.3(d)(5) of this Subpart. In New York City, such notification shall also inform parents or persons in parental relation of the right to transfer to a Bilingual Education program in a school that has not been identified as a School Under Registration Review or as a Focus or Priority School pursuant to section 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 five (5) 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) 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) 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 understand, that they retain the right to transfer their child to a Bilingual Education program and that transportation will be provided in accordance with Education Law section 3635 and/or district policy as applicable.

(5) School districts shall individually meet with the parents or persons in parental relation of English Language Learners at least once a year, in addition to parent-teacher conferences, quarterly progress meetings or other such scheduled meetings provided for parents or persons in parental relation of all students, to discuss the goals of the program, their child's language development progress, their child's English language proficiency assessment results, and language development needs in all content areas. This additional meeting shall include all school staff necessary to sufficiently inform the parents or persons in parental relation about the child's language development in all content areas in English and in the child's home language in the case of students enrolled in a Bilingual Education program. Such meeting shall be conducted with a qualified interpreter/translator in the language or mode of communication the parent or person in parental relation best understands. School districts shall determine the manner and form of such individual parent meetings, in accordance with local collective bargaining agreements.

(6) Each school district shall maintain records of signed notices of parents and persons in parental relation that indicate program selection as well as orientation session agendas and sign in sheets for such orientations. In the event that a parent or person in parental relation does not indicate a program choice, such information shall be recorded by the district. All such information must be accessible at all times that school is open for school staff. Signed notices of parents and persons in parental relation that indicate program selection shall be included in the student's cumulative record.

(g) Placement

(1) Except as otherwise provided in this Part, the process for initial enrollment or reentry identification and parent notification, orientation, and placement shall be completed such that a student is placed in either a Bilingual Education or an English as a New Language program within ten (10) school days after the student's initial enrollment or reentry in the school district.

(2) Except as otherwise provided in this Part, the process for initial or reentry identification and parent notification, orientation, and placement shall be completed such that a student is placed in either a Bilingual Education program or an English as a New Language program by the first day of school in September for students identified more than ten (10) business days prior to such date.

(h) Provision of Programs

For purposes of this subdivision, a unit of study and a unit of credit shall be as defined in section 100.1(a) and (b), respectively, of this Title.

(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 and 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 and 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.

(iii) Intermediate/Transitioning: Students shall receive at least one unit of study or its equivalent of English as a New Language. At least one half of a unit of study or its equivalent shall be in Integrated English as a New Language and English Language Arts instruction, and at least 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 and 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 and 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 and 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 Integrated English as a New Language and English Language Arts unit of study, one unit of credit in the content area for successful completion of each Integrated English as a New Language unit of study; and one unit of elective credit for successful completion of a second Stand-alone English as a New Language unit of study.

(ii) Low Intermediate/Emerging: Students shall receive at least two units of study or its equivalent of English as a 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 and 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 New Language instruction. A student shall earn one unit of English Language Arts credit for successful completion of Integrated English as New Language and English Language Arts unit of study or one unit of credit in the content area for successful completion of an Integrated English as a New Language unit of study, or one unit of elective credit for successful completion of Stand-alone English as a New Language unit of study.

(iii) Intermediate/Transitioning: Students shall receive at least one unit of study or its equivalent of English as a New Language Instruction. At least one half of a unit of study or its equivalent shall be in Integrated English as a New Language instruction and at least one half of a unit of study or its equivalent shall be either Integrated English as a New Language instruction or Stand-alone English as a New Language instruction. A student shall earn one unit of English Language Arts credit for successful completion of Integrated English as New Language and English Language Arts unit of study or one unit of credit in the content area for successful completion of an Integrated English as a New 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 in a content area for successful completion of the Integrated English as a New Language unit of study in a content area other than English Language Arts.

(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 in 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 or such other services that monitor and support their 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.

(3) *Bilingual Education Programs.* A Bilingual Education program in grades K-12 shall provide:

(i) Two units of study or its equivalent in Language Arts, one in English and one in the student's home language. English Language Arts may be provided through Integrated English as a New Language as prescribed in paragraphs (1) and (2) of this subsection. A student shall earn one half credit for each Language Arts unit of study, for a total of one combined total credit for Language Arts each year.

(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, but must include a minimum of two bilingual core content areas other than Language Arts taught in both the student's home language and English), in accordance with section 100.1(a) and (b) of this Title.

(iii) English as a New Language instruction, as prescribed in section 154-2.3(h)(1) and (2) of this Subpart.

(i) *Grade Span.* The maximum allowable grade span for grouping instruction in grades K-12 English as a New Language or Bilingual Education classes is two contiguous grades, except for English Language Learners in a special class, as defined by section 200.1(uu) of this Title.

(j) *Support Services for students not demonstrating adequate performance.* For each English Language Learner who makes below specified levels of performance on the annual English language proficiency assessment, as defined by the Commissioner, the school district shall determine the additional support services to provide the student, taking into consideration evidence such as:

- (1) Number of years of instruction in a Bilingual Education or English as a New Language program;
- (2) English and home language literacy, content area and socio-emotional support needs of Students with Inconsistent/Interrupted Formal Education;
- (3) English and home language literacy needs of Long-term ELLs;
- (4) Results on the annual English language proficiency assessment exam;
- (5) Bilingual Education or English as a Second language teacher recommendation;
- (6) Content area teacher recommendation;
- (7) Parent or other person in parental relation request;
- (8) Sample of student work in English and, if possible, in their home language; and
- (9) Bilingual educational evaluation, if the student has or is suspected of having a disability.

The support services provided shall be aligned with any intervention plans (e.g., Academic Intervention Services) the school district is already providing to all students.

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

(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 by the Commissioner for this purpose.

(m) *Exit Criteria.*

(1) Each school district will annually determine if a student identified as an English Language Learner will continue to be identified as an English Language Learner. The following criteria shall be used to make a determination to exit a student from English Language Learner status:

(i) Scores at or above a state designated level of proficient/commanding on the annual English language proficiency assessment; or

(ii) Scores at or above a state designated level of advanced/expanding on the annual English language proficiency assessment in all modalities, and at or above proficient on the English Language Arts assessment required pursuant to sections 100.3 and 100.4 of this Title or met or exceeded proficiency standards as defined in section 100.18 of this Title on the Regents Examination in Comprehensive English or the Regents Examination in ELA (Common Core) or an approved alternative.

(2) Students with disabilities. Each school district will annually determine if a student with a disability who is identified as an English Language Learner will continue to be identified as an English Language Learner pursuant to Subpart 154-3 of this Part

(n) *SIFE Status.* Students identified as a Student with Inconsistent/Interrupted Formal Education as defined in section 154-2.3(a) of this Subpart shall continue to be identified as such until they are performing at the transitioning/intermediate level on the 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 opportunities to participate in all school programs and extracurricular activities as non-English Language Learners;
- (3) English Language Learners are offered Bilingual Education and/or English as a New Language programs, as required by subdivision (h) of section 154-2.3 of this Subpart;
- (4) The district provides the requisite number of Bilingual Education programs as prescribed in section 154-2.3(d) of this Subpart, or has received a one-year exemption under section 154-2.3(d) and is actively recruiting qualified staff for such programs;
- (5) Parents or other persons in parental relation of English Language Learners receive orientation and notification about program types, as prescribed in section 154-2.3(f) of this Subpart.
- (6) English Language Learners are given the requisite amount of English as a New Language and Home Language Arts instruction as prescribed in section 154-2.3(h) of this Subpart;
- (7) Teachers in the district's Bilingual Education and English as a New Language programs are appropriately certified pursuant to Part 80 of this Title;
- (8) Teachers of English Language Learners receive the requisite number of in-service professional development, as prescribed in section 154-2.3(k) of this Subpart and Part 80;
- (9) The district will comply with the requirements of this Part and the provisions of the Education Law governing programs for students designated as English Language Learners;
- (10) The programs for English Language Learners will be administered in accordance with applicable federal and state law and regulations and the district's comprehensive plan as described in paragraph (b) of this subdivision.

(b) *Plan.* Prior to the start of each school year, each school district shall develop a Subpart 154-2 Comprehensive Plan in a form specified by the Commissioner. Such plan shall be submitted to the

Commissioner prior to the start of each school year by a date specified by the Commissioner. Each plan shall include the following:

- (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 Former English Language Learners;
- (3) The district's plan to provide parents and other persons in parental relation with information about all Bilingual Education and English as a New Language programs available in the district as well as information and notices regarding program placement and the rights of such parents or persons in parental relation, in the language or mode of communication that parents and persons in parental relation best understand;
- (4) The district's system to annually measure and track the academic progress and English language proficiency of English Language Learners and use of data to drive instruction;
- (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;
- (7) The district's procedure to identify support services for English Language Learners as prescribed in section 154-2.3(i) of this Subpart that are aligned with any intervention plans the school district is already providing to all students, including the district's services, programs and supports, if they exist and/or instructional practices, for 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
- (8) The district's policies and procedures to refer 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 consistent with the requirements of this Subpart.
- (9) The district's procedures to exit English Language Learners and Students with Inconsistent/Interrupted Formal Education;

(10) The district's services to support Former English Language Learners, as prescribed in sections 154-2.3(h)(1)(v) and 154-2.3(h)(2)(v).

(c) *Reporting.* Each school district shall annually submit to the Commissioner a data and information report in such form(s) and pursuant to such timeline(s) prescribed by the Commissioner. The report must include the following:

(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 grade level;

(5) A summary of the number and qualifications of teachers and support personnel providing services to ELLs; and

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

(7) A summary of all students for whom the district has requested a Request for Extension of Services, as defined in section 154-2.2(f) of this Subpart. Such summary must include the name of all such students, including but not limited to transfer students and graduates from grades six (6), eight (8) or nine (9). Such summary need not include students who scored proficient/commanding on the annual English language proficiency assessment, students discharged from the New York State public school system, students who have graduate from high school, or students enrolled in nonpublic schools.