

## INSTRUCTION FOR MULTI LANGUAGE LEARNERS

As you likely know, the State Education Department (SED or NYSED) recently revised Part 154 of the Commissioner's regulations in an effort to improve instruction, programming, and better outcomes for English Language Learners (ELLs). Those revisions, which take effect for the 2015-2016 school year, will have significant implications for the ways in which school districts identify, educate, and transition ELLs, as well as how they hire and allocate staff and provide professional development.

The Part 154 regulations were revised to ensure equal educational opportunities for ELLs to meet the Common Core Learning Standards (CCLS). Our sample policy and administrative regulation do not address all aspects of the new regulations—specifically, those contained in Subpart 154-3, which pertain to the education of ELLs with disabilities—as certain issues will be fleshed out in time and with SED guidance, and others are simply beyond the scope of policy. There are, however, a number of salient issues that warrant discussion.

### IDENTIFICATION AND REVIEW

The previous version of Part 154 provided for an ELL identification process that included: (1) administration of the Home Language Questionnaire, (2) an individual interview with the student, and (3) based on the results of the individual interview, the administration of a statewide English language proficiency identification assessment. While the broad strokes of ELL identification have not changed, the new Section 154-2.3 has altered the process in a number of important ways.

To start, while the Home Language Questionnaire and individual interview are still required parts of the ELL identification process, both must now be conducted by "qualified personnel." *See* 8 NYCRR 154-2.3(a). The term "qualified personnel" is defined as:

- 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.

8 NYCRR 154-2.2(u).

Next, the newly revised Section 154-2.3 requires an additional step in the identification of ELLs with disabilities prior to the administration of the English language proficiency identification assessment.

Districts must now follow a specific process through the use of a Language Proficiency Team (LPT), as specified in Section 154-3.3(a), to determine whether a student with a disability may have second language acquisition needs and whether such student will take the statewide English language proficiency identification assessment.

Additionally, Section 154-2.3(b) sets out a new process for reviewing the identification of a student as an ELL. This process is initiated by a written request from the student (if he or she is 18 or older), the parent or person in parental relation to the student, or the student's teacher (if he or she has the written consent of the parent or person in parental relation). Previously, Part 154 did not provide a process for remedying the misidentification of students identified as ELLs.

Finally, while it does not necessarily change the process for identifying ELLs, the new Part 154 regulations require districts to identify certain ELL subpopulations, including students with inconsistent/interrupted formal education, ELLs with disabilities, newcomer ELLs, developing ELLs, long-term ELLs, and former ELLs.

## ORIENTATION

As noted above, Part 154 has been revised to ensure parents of ELLs are provided with relevant information regarding district instruction and programming. School districts have, for some time, been required to provide the parents of and persons in parental relation to new ELLs with an orientation session on the state standards, assessments, and school expectations, as well as the program goals and requirements for bilingual education and English as a new language (ENL) programs. However, as part of the Part 154 changes regarding parental awareness of school district instruction and programming for ELLs, the regulations now state that districts must provide a *high quality* orientation session to parents of and persons in parental relation to new ELLs *prior* to a student's enrollment in a program (though districts cannot withhold students from timely program placement if a parent or person in parental relation does not attend an orientation session). *See* 8 NYCRR 154-2.3(f)(1).

## NOTICE

Similarly, providing appropriate notifications to parents and persons in relation to ELLs is not a new requirement. However, the new regulations provide more detail regarding the timing and content of such orientation sessions. *See* 8 NYCRR 154-2.3(f)(2). Further details are provided within the sample administrative regulation.

## QUALIFIED PERSONNEL

The definition of "qualified personnel" has changed, as noted more thoroughly above, to specify the type of certification that teachers must hold as of September 2015 for various grade levels, ELL programs, and ELL-associated functions such as the identification and identification review processes. *See* 8 NYCRR 154-2.2, 2.3(k)(1).

## PROFESSIONAL DEVELOPMENT

It is not a new requirement that personnel who provide instruction or other services to ELLs receive in-service training to enhance staff appreciation for student languages and cultures in order to enable them to provide appropriate instructional and support services to address such needs. However, the new changes to Part 154 of the Commissioner's regulations require that all teachers, administrators, and level III teaching assistants receive professional development that specifically addresses the needs of ELLs. To that end, the minimum number of hours of professional development has increased and the nature of professional development required has changed. *See* 8 NYCRR 154-2.3(k). Further details are provided within the sample administrative regulation.

## PROGRAM REQUIREMENTS

The new Part 154 of the Commissioner's regulations now requires school districts to annually estimate ELL enrollment for the following school year in order to create a sufficient number of bilingual education programs in the school district if there are twenty (20) or more ELLs *district wide* of the same grade level who speak the same home language. *See* 8 NYCRR 154-2.3(d). This represents a marked departure from the old regulations which merely required that individual schools establish bilingual education programs if such *school* had twenty (20) or more ELLs of the same grade level who spoke the same home language.

## FORMER ELL SERVICES

Previously, Part 154 required that transitional services be provided to limited English proficient pupils transferring from bilingual or free-standing English as a second language programs, and that such services be provided only for one (1) year. The newly developed regulations now provide for *at least two (2) years* of monitoring and support for former ELLs, and provide greater specificity as to what types of intervention must be offered. *See* 8 NYCRR 154-2.3.

## RECORDKEEPING

Whereas the old Part 154 Commissioner's regulations did not require school districts to maintain records of a parent's preferred mode of communication or language, or records of notices generated during the identification and placement process, the new regulations now require school districts to maintain such documentation in ELLs' cumulative records. *See* 8 NYCRR 154-2.3(c). Moreover, each district must maintain records of all signed notices of parents and persons in parental relation that indicate program selection, as well as orientation session agendas and sign in sheets for those orientations. *See* 8 NYCRR 154-2.3(f)(6).

## ELLs WITH DISABILITIES AND THE LANGUAGE PROFICIENCY TEAM (LPT)

For ELLs who have a disability, the new Commissioner's regulations now mandate that a Language Proficiency Team (LPT) convene in order to determine whether such students may have second language acquisition needs or whether their disability is the determinant factor affecting their ability to demonstrate English proficiency. The LPT is also charged with determining whether ELLs should take the English language proficiency assessment and, refer such student to the CSE, as

appropriate, to determine whether the student should take such assessment with or without testing accommodations. *See* 8 NYCRR 154-3.3. Specific guidance from the State Education Department on how the LPT will work is forthcoming.

#### ADDITIONAL CONSIDERATIONS

Please note that the new Part 154 regulations contemplate the issuance of additional guidance from SED on a number of issues. Our office will monitor SED's work in this area, and will provide additional information to subscribing districts as is appropriate.