

**STATE BOARD OF EDUCATION  
ADMINISTRATIVE CODE  
COMMENT/RESPONSE FORM**

This comment and response form contains comments from the July 8, 2015, State Board meeting when the draft regulations were considered at Second Discussion Level.

**Topic:** Bilingual Education

**Meeting Date:** August 5, 2015

**Code Citation:** N.J.A.C. 6A:15

**Level:** Proposal Level

**Division:** Learning Supports and  
Specialized Services

**Completed by:** Office of Supplemental  
Educational Programs

**Summary of Public Comments and Agency Responses:**

The following is a summary of the comments received from State Board members and the public and the Department's responses. Each commenter is identified at the end of the comment by a letter or number that corresponds to the following list:

- A. Mark W. Biedron, President  
State Board of Education
- B. Ronald Butcher, Member  
State Board of Education
- 1. Jessica Levin  
Education Law Center
- 2. Elizabeth Franks  
NJTESOL/NJBE, Inc.
- 3. Deborah Cortigiani  
Basking Ridge, NJ
- 4. Angela Timm
- 5. Jane Frost-Guzzo, ESL Teacher  
Nutley Public Schools
- 6. Susan R. Malta, ESL Teacher  
Ocean Township Schools
- 7. ELL Supervisors Subcommittee  
New Jersey Principals and Supervisors Association
- 8. Rosemarie Armstrong  
Washington Township Public Schools
- 9. Sandra Nahmias  
Linden Public Schools

10. Lois Spitzer, Associate Professor of Education, ESL/BE Endorsement Program  
Stockton University
11. Hana Prasker, ESL Teacher
12. Sandee McBride, President  
NJTESOL/NJBE
13. Jenny Paulino  
NJTESOL/NJBE
14. Michelle Land
15. Surinder Kaur  
Camden City Public Schools
16. Linda Hornyak

1. **COMMENT:** The commenter requested the Department submit proposed amendments based on public comment to State Board members prior to the Proposal Level presentation. **(A)**

**RESPONSE:** The Department has provided the proposed amendments to the State Board prior to the Proposal Level review.

2. **COMMENT:** In light of the Department's statement there may be additional amendments to the chapter at Proposal Level as the result of public comments, the commenter reminded the audience of the importance of public input in the rulemaking process. **(B)**

**RESPONSE:** The Department thanks the commenter and agrees the rulemaking process provides a valuable opportunity for the public to participate in the development and amendment of State regulations.

3. **COMMENT:** The commenter raised concerns about the accuracy of the Department's response that the rules do not cover dual-language programs." **(1)**

**RESPONSE:** The Department clarifies that N.J.A.C. 6A:15 does not cover dual-language programs that enroll English-speakers for the purpose of immersion and second language acquisition. Rather, N.J.A.C. 6A:15 regulates only dual-language bilingual education programs that enroll both English speakers and English language learners (ELLs) with the goal of providing language assistance to ELLs and second language to English speakers.

4. **COMMENT:** The commenter expressed concern the readoption process will not conclude prior to the sunset of N.J.A.C. 6A:15 on September 15, 2015. The commenter requested clarification on how N.J.A.C. 6A:15 will function after the sunset date and prior to the readoption date. **(1)**

**RESPONSE:** The Department expects to submit to the Office of Administrative Law the notice of proposal for N.J.A.C. 6A:15 prior to sunset on September 15, 2015. Pursuant to

N.J.A.C. 1:30-6.4(g), a 180-day extension of the sunset date for N.J.A.C. 6A:15 will be granted upon the notice of proposal's submission. During this period, the current version of N.J.A.C. 6A:15 will remain in effect.

5. **COMMENT:** The commenter expressed support for the Department's efforts to update the provisions in the code, the stylistic changes made throughout the chapter and the alignment to State law. (2)

**RESPONSE:** The Department appreciates the commenter's support.

6. **COMMENT:** The commenter asked if the needs of ELLs can be addressed specifically in relation to current reforms that require using rigorous standards and high-stakes assessments. (2)

**RESPONSE:** The Department welcomes suggestions regarding academic standards and assessments, but cannot address whether they would be appropriate for the current rulemaking as specific suggestions were not provided

7. **COMMENT:** The commenter urged the Department to develop a best practices document/guidance to help school districts provide better services to ELLs and offered to assist the Department in the development of the guidance. (7)

**RESPONSE:** The Department appreciates the commenter's support. The Department plans to develop and release a guidance document for ELLs and will enlist the commenter's participation in the process.

8. **COMMENT:** The commenters recommended the Department further amend the proposed definition of "English as a second language program" in N.J.A.C. 6A:15-1.2 to require school districts to offer a minimum of one dedicated period of English language development (ESL instruction). (1, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16)

**RESPONSE:** The Department disagrees. The current definition requires at least one period of instruction based on English proficiency that teachers aural comprehension, speaking, reading and writing in English. Amending the definition to state "one dedicated period" would restrict school districts' flexibility to offer ESL push-in programs in content area classes.

9. **COMMENT:** The commenter requested the Department expand its proposed definition of "English language learner" in N.J.A.C. 6A:15-1.2 to "explicitly include preschoolers." (1)

**RESPONSE:** The Department disagrees. Although preschool students may be ELLs, N.J.A.C. 6A:15 solely concerns the provision of bilingual programs to students in kindergarten to grade 12. In addition, the provision of services to preschool ELL students is appropriately addressed within N.J.A.C. 6A:13A. Therefore, including preschool students in the definition of ELLs in Chapter 15 may be confusing as it does not accurately reflect the chapter's scope.

10. **COMMENT:** The commenter suggested the Department further amend its proposed definition of "English language learner" by specifying, "ELLs in grades K-12 are identified with a state-approved English language proficiency test while preschool

students are identified through a home language survey and age-appropriate methodologies to identify preschool ELLs (New Jersey Preschool Guidelines).” (2)

**RESPONSE:** The Department disagrees. N.J.A.C. 6A: 15-1.3, Identification of limited English proficient (LEP) students, contains the requirements for identification of ELLs in both kindergarten through grade 12 and preschool. Adding the proposed language to N.J.A.C. 6A:15-1.2 in the definition of an ELL would be duplicative.

11. **COMMENT:** The commenter expressed concern the Department’s proposed definition of “English language learner” in N.J.A.C. 6A:15-1.2 does not specify students “with difficulty in any one of the language domains of speaking, reading, writing or understanding English,” unlike the current definition of “limited English proficient.” The commenter said the expansion of the “English language learner” definition would ensure the inclusion of all students eligible for language assistance programs. (1)

**RESPONSE:** The Department agrees the language domains of speaking, reading, writing and listening are integral to the identification of ELLs. Therefore, the Department proposes to amend N.J.A.C. 6A:15-1.2 at proposal level as follows:

“English language learner” or “ELL” means a student whose native language is other than English [[and who is in the process of learning English]]. The term refers to students with varying degrees of English language proficiency [[from minimal to fluent,]] in any one of the domains of speaking, reading, writing, or listening and is synonymous with limited English speaking ability as used in N.J.S.A. 18A:35-15 to 26.

*Note: The rule text provided above reflects the progression of the rule proposal. The rule text included in the administrative code portion of this document reflects the rule as it is being put forth at Proposal Level.*

12. **COMMENT:** The commenters requested the Department clarify the definition of “sheltered English instruction” in N.J.A.C. 6A:15-1.2 to specify that teachers must receive “at least 15 hours of documented training on developmentally appropriate strategies.” (2, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16)

**RESPONSE:** The Department disagrees. Mandating a minimum number of sheltered instruction training hours does not provide school districts the flexibility of varying professional development for staff based upon individual needs.

13. **COMMENT:** The commenters requested the Department add a definition for “students with interrupted formal education (SIFE)” in N.J.A.C. 6A:15-1.2 because it is a growing subpopulation of ELLs. (2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 )

**RESPONSE:** The Department disagrees. While recognizing there is a growing population of SIFEs in New Jersey, or ELLs who experienced at least two years of interrupted formal education in their home country, the scope of N.J.A.C. 6A:15 is broad enough to address the academic and non-academic needs of this subpopulation of ELLs. The Department will provide a definition and describe the student population, as well as strategies to assist SIFEs, in a guidance document that will be available during the 2015-2016 school year.

14. **COMMENT:** The commenters requested the Department consider amending N.J.A.C. 6A:15-1.3, Identification of eligible LEP students, to include assessing ELLs' mastery of the literacy standards using assessments in their native language as part of the ELL identification process. (2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16)

**RESPONSE:** The Department realizes assessment in the native language may provide a clearer picture of ELLs' literacy in the native language. The Department is working with stakeholders to research and identify valid measures to assess ELLs' attainment of the literacy standards and awaits the findings of the Study Commission on the Use of Student Assessments in New Jersey to determine the best assessment options for ELLs. Therefore, the Department needs more time to review input from various stakeholders for possible consideration of making further amendments in a future rulemaking.

15. **COMMENT:** The commenters suggested the Department amend N.J.A.C. 6A:15-1.4, Bilingual programs for limited English proficient students, to include programs that meet the needs of SIFEs, or ELLs who experienced at least two years of interrupted formal education in their home as a program option for this subpopulation of students. (2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14)

**RESPONSE:** The Department disagrees. N.J.A.C. 6A:15 includes programs and services that will address the needs of SIFEs. However, the Department will describe this student population and provide strategies to assist them in a guidance document that will be available during the 2015-2016 school year.

16. **COMMENT:** The commenter supported the amendments proposed at N.J.A.C. 6A:15-1.4(f) and (g) that specify the district board of education is the entity responsible for designing additional programs and services to meet the special academic and career-readiness needs of ELLs, and the special needs of ELLs (e.g., remedial instruction through Title I programs; special education; school-to-work programs; computer training; gifted and talented education services), respectively.(2)

**RESPONSE:** The Department appreciates the commenter's support.

17. **COMMENT:** The commenters requested the Department propose a new rule at N.J.A.C. 6A:15-1.4(j) to require school districts to "monitor and evaluate the progress of ELLs with valid assessment measures which take the language of instruction as well as the English language proficiency level of the ELL into consideration." (2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16)

**RESPONSE:** The Department recognizes the importance of valid assessment measures and consideration of language proficiency levels in assessment. The Department is working with stakeholders to research and identify valid assessment measures that consider ELLs' language of instruction and English language proficiency. The Department awaits the findings of the Study Commission on the Use of Student Assessments in New Jersey to determine the best assessment options for ELLs. Therefore, the Department needs more time to review input from various stakeholders for possible consideration making further amendments in a future rulemaking.

18. **COMMENT:** The commenters requested the Department propose a new rule at N.J.A.C. 6A:15-1.4(k) establishing class-size and group-size requirements for bilingual, sheltered, ESL, and SIFE classes as articulated in N.J.A.C. 6A:13, Programs and Practices to Support Student Achievement. The commenters recommended specific class sizes for

general education classes that include ELLs, kindergarten through grade 5 ESL classes, grades 6 through 12 ESL classes and SIFE classes. (2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16)

**RESPONSE:** The Department thanks the commenters for the suggestion. However, the Department will need additional time to research and obtain input from stakeholders on class-size recommendations for programs that service ELLs and will consider class-size requirements for a future rulemaking, if appropriate.

19. **COMMENT:** The commenter recommended the Department amend N.J.A.C. 6A:15-1.5 to include “lack of qualified teachers” as a reason for granting school districts a waiver of the bilingual education program requirement. (1)

**RESPONSE:** The Department disagrees. The conditions under which schools districts may request a bilingual education program waiver are authorized in N.J.S.A. 18A:35-18(b). The statute specifically authorizes waivers when the district board of education demonstrates that offering a full-time bilingual program is not practical due to the ELLs’ age range, grade span and geographic location.

20. **COMMENT:** The commenter recommended more information, clarity, and transparency in the submission and review of school districts’ bilingual education waiver requests as articulated in N.J.A.C. 6A:15-1.5 and the three-year bilingual education/ESL/English language services plan as stipulated in N.J.A.C. 6A:15-1.6. (1)

**RESPONSE:** The Department disagrees. The Department’s process for the annual submission and review of bilingual education program waivers is consistent with the parameters set forth in N.J.A.C. 6A:15-1.5. However, the Department will provide more transparency regarding school districts that receive bilingual education program waivers by annually updating the bilingual education webpage with this information. Additionally, the Department will provide more detailed information on the process for the review of school districts’ three-year bilingual education/ESL/English language services plan in a guidance document that will be available during the 2015-2016 school year.

21. **COMMENT:** The commenter supported the submission of annual bilingual education waiver requests but requested the Department consider expanding N.J.A.C. 6A:15-1.5 to require all teachers who work with ELLs in a school district and are granted a waiver to receive sheltered instruction training. (2, 8, 9, 10, 11, 12, 15)

**RESPONSE:** The Department disagrees. The requirement for all teachers who work with ELLs in a school district receiving a bilingual education program waiver to receive sheltered instruction training may not be appropriate in all cases. School districts request waivers for alternative programs other than sheltered instruction. Teachers in other alternative programs (e.g., high-intensity ESL, part-time bilingual education) may not need sheltered instruction training because of their expertise in other instructional strategies with ELLs. However, beginning with waiver requests for the 2016-2017 school year, the Department will require school districts requesting waivers to implement sheltered instruction programs provide data regarding their teachers’ training in sheltered instruction strategies to meet the needs of ELLs.

22. **COMMENT:** The commenter requested clarification and specification on N.J.A.C. 6A:15-1.6(b), which articulates the Department's process for monitoring and accountability of school districts' bilingual/ESL programs. (2)

**RESPONSE:** The Department's mechanisms for holding school districts accountable for the implementation of a three-year bilingual/ESL/English language services plan are the Quality Single Accountability Continuum (QSAC) and the Bilingual/ESL Desk Audit process conducted by staff in the Office of Supplemental Educational Programs. QSAC is the Department's monitoring and evaluation system for school districts in five key components that have been identified, based on research, to be key factors in effective school districts. The QSAC process reviews data on the achievement of ELLs and school districts' programs and services to support ELLs as an indicator of effectiveness of the three-year bilingual/ESL/English languages service plan. The Bilingual/ESL Desk Audit also reviews the implementation of school districts' three-year bilingual/ESL/English languages service plan and its impact on student achievement.

23. **COMMENT:** The commenter requested the Department amend the accountability process at N.J.A.C. 6A:15-1.6(b), which states the Department will establish procedures to monitor and evaluate school districts' three-year bilingual/ESL programs, to add the review of native language and/or English language proficiency data as part of the Department's process for the monitoring and evaluation of school districts' bilingual/ESL programs. (2)

**RESPONSE:** The Department disagrees. The Department includes an analysis of language proficiency assessment data as one of the QSAC indicators through the annual measurable achievement objectives results.

24. **COMMENT:** The commenter requested clarification whether the amendment at N.J.A.C. 6A:15-1.6(a)1vii still will require school districts to submit a budget for how programs are funded. (2)

**RESPONSE:** N.J.A.C. 6A:15-1.6(a)(1)vii, as proposed with amendments, will still require school districts to submit a budget with their three-year bilingual education plan, but the budget will no longer be required to reflect bilingual categorical aid. The School Funding Reform Act does not provide categorical funds. Instead, a weighted formula is used to determine State aid for ELLs.

25. **COMMENT:** The commenter requested the Department include language to require school districts to include administrators charged with supervising a bilingual/ESL program in their plans for in-service training. The commenter also suggested the amended language specify the district board of education's "plan for in-service training for administrators and personnel who observe and evaluate all teachers of ELLs to include strategies and appropriate assessment specific to help ELLs meet the CCSS and WIDA English language development standards." (2, 15, 16)

**RESPONSE:** The Department agrees that further specification regarding the content of and the participants in the in-service training will guide school districts' planning efforts. Therefore, the Department proposes to amend N.J.A.C. 6A:15-1.8(a) as follows:

The district board of education shall develop a plan for inservice training for bilingual, ESL, [[and]] mainstream teachers [[based on their needs and]], **administrators who supervise bilingual/ESL programs as well as administrators and any personnel who**

**observe and evaluate teachers of ELLs. The plan shall** include instructional strategies and appropriate assessments to help [LEP students] ELLs meet the CCCS and the WIDA English language development standards. All bilingual and ESL teachers shall receive training in the use of the ESL curriculum.

*Note: The rule text provided above reflects the progression of the rule proposal. The rule text included in the administrative code portion of this document reflects the rule as it is being put forth at Proposal Level.*

26. **COMMENT:** The commenter requested the Department require all administrators/personnel who supervise bilingual or ESL programs that exceed 100 English language learners to have bilingual or ESL certification. (2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16)

**RESPONSE:** Regulatory changes to State certification requirements are beyond the scope of N.J.A.C. 6A:15 and the current rulemaking.

27. **COMMENT:** The commenter requested the Department amend N.J.A.C. 6A:15-1.10 to change the minimum timeline for reentry retesting to one marking period rather than one-half an academic year. (2)

**RESPONSE:** The Department disagrees. N.J.A.C. 6A:15-1.10(e)1 allows school districts to waive the minimum time limitation if a student is experiencing extreme difficulty in adjusting to the mainstream classroom.

28. **COMMENT:** The commenter requested the Department amend N.J.A.C. 6A:15-1.12 to add "approved classrooms for the appropriate class size" as a requirement for classrooms used by school districts use to conduct bilingual, ESL or English language services programs. (2)

**RESPONSE:** The Department disagrees. The requirements for approved classrooms and their appropriate class size are specified in the Department's facilities efficiency standards incorporated into school districts' long-range facilities plan, pursuant to N.J.A.C. 6A:26-2.2. Adding this information to N.J.A.C. 6A:15 would be duplicative.

29. **COMMENT:** The commenters expressed support for the proposed amendment at N.J.A.C. 6A:15-1.13, which requires school districts to notify parents their child has been identified as eligible for enrollment in a bilingual, ESL, or English language services program, to specify that school districts must issue the notification within 30 days of the child's identification as an ELL. The commenter noted the proposed amendment is consistent with the 30 day timeline in Title III of the Elementary and Secondary Education Act (ESEA). (1)

**RESPONSE:** The Department appreciates the commenters' support.

30. **COMMENT:** The commenter recommended the Department further amend N.J.A.C. 6A:15-1.13 to specify the contents of the parental notification for further consistency with Title III of the ESEA. (1)

**RESPONSE:** The Department agrees that N.J.A.C. 6A:15-1.3 should be expanded to specify the contents of the notification to parents, which will result in a consistent and comprehensive message to all parents of ELLs in the State. Through its monitoring



process, the Department has worked with school districts to include this valuable information but was limited to mandating the components of the notification for school districts receiving Title III funds. Therefore, the Department proposes to further amend N.J.A.C. 6A:15-1.13(a) as follows:

Each district board of education shall notify by mail the parents of [LEP students] ELLs of the fact that their child has been identified as eligible for enrollment in a bilingual, ESL, or English language services education program. **The district board of education shall issue the notification within 30 days of the child's identification.** Notice shall include a statement that the parents may decline their child's enrollment in a bilingual program, and they shall be given an opportunity to do so if they choose. The notice shall be in writing and in the language in which the parent(s) possesses a primary speaking ability, and in English[.], and shall include the following information:

1. Why the student was identified as an ELL;
2. Why the student needs to be placed in a language instructional educational program that will help him or her develop and attain English proficiency and meet State academic standards;
3. The student's level of English proficiency, how the level of English language proficiency was assessed, and the student's academic level;
4. The method of instruction the school district will use to serve the student, including a description of other instruction methods available and how the methods differ in content, instructional goals, and the use of English and a native language, if applicable;
5. How the program will meet the student's specific needs in attaining English and meeting State standards;
6. The program's exit requirements, the expected rate of transition into a classroom not tailored for ELLs, and, in the case of high school students, the expected rate of graduation; and
7. How the instructional program will meet the objectives of the individualized education program of a student with a disability.

*Note: The rule text provided above reflects the progression of the rule proposal. The rule text included in the administrative code portion of this document reflects the rule as it is being put forth at Proposal Level.*

31. **COMMENT:** The commenter suggested the Department amend N.J.A.C. 6A:15-1.13 to "explicitly include rights for LEP parents." The commenter noted that N.J.A.C. 6A:15 does not offer rights to LEP parents whose children are not enrolled in language assistance programs. The commenter stressed that further amendment of the chapter would provide a mechanism to enforce the January 7, 2015, guidance issued by the U. S. Departments of Justice and Education, which requires school districts to "ensure meaningful communication with LEP parents in a language they can understand." (1)

**RESPONSE:** The Department disagrees that N.J.A.C. 6A: 15-1.13 should be amended to include requirements for communication to parents of ELLs not enrolled in language assistance programs. N.J.A.C. 6A:15 explicitly regulates programs for ELLs and program-related communication to their parents. N.J.A.C. 6A:15 applies only to ELLs enrolled in language assistance programs in New Jersey's public schools by specifying the rules and requirements for school districts that educate ELLs. Adding language that impacts students not enrolled in language assistance programs is beyond the chapter's scope. The rights of LEP parents of all students are protected under Federal civil rights legislation.

32. **COMMENT:** The commenter recommended the Department add language to N.J.A.C. 6A:15-1.13 to ensure school districts provide translation of special education documents for parents of ELLs with special needs. (1)

**RESPONSE:** The Department disagrees that additional language is needed. N.J.A.C. 6A:14-2.4, Native language, requires school districts to provide written notice to parents of ELLs in a language used for communication by the parent and student when conducting special education procedures pursuant to N.J.A.C. 6A:14-2, Procedural Safeguards. Adding the recommended requirement to N.J.A.C. 6A:15-1.13 would be duplicative.

33. **COMMENT:** The commenter suggested the Department further amend N.J.A.C. 6A:15 to include “an explicit requirement for the Department to monitor compliance with parental notification and translation rights ... .” The commenter stated the amendment will enable the Department to better address Administrative Code violations when they are brought the Department’s attention. (1)

**RESPONSE:** The Department disagrees. N.J.A.C. 6A:15 has one notification requirement, which is for school districts to notify parents within 30 days of their child being identified for enrollment in a bilingual, ESL, or language services program. The Department’s QSAC process and bilingual education monitoring protocol include indicators to review school districts implementation of the notification requirement in N.J.A.C. 6A:15-1.13. Additionally, the monitoring protocol for Federal programs includes the review of school district’s compliance with the requirement to translate multiple parental notification documents. Finally, issues brought to the Department’s attention are addressed by the county offices of education or the Office of Supplemental Educational Programs working with school districts.

34. **COMMENT:** The commenter stated N.J.A.C. 6A:15-1.15 should be amended to include a complaint system comparable to the special education complaint system at N.J.A.C. 6A:14-9.2, which would enable the Department to better address Administrative Code violations when they are brought the Department’s attention. (1)

**RESPONSE:** The Department disagrees the chapter should be amended to include a complaint process similar to the process in N.J.A.C. 6A:14, Special Education Programs. The Department currently has processes and procedures in place for parents and other stakeholders to submit concerns regarding the implementation of educational programs and services for all students. For all students, including ELLs, stakeholders can contact their respective county office and the appropriate program office to express concerns about a student’s educational program, including special services received such as special education and English language assistance services.



**State of New Jersey**  
DEPARTMENT OF EDUCATION  
PO Box 500  
TRENTON, NJ 08625-0500

**Proposal Level**  
**August 5, 2015**

CHRIS CHRISTIE  
*Governor*  
KIM GUADAGNO  
*Lt. Governor*

DAVID C. HESPE  
*Commissioner*

TO: Members, State Board of Education  
FROM: David C. Hespe, Commissioner  
SUBJECT: N.J.A.C. 6A:15, Bilingual Education  
REASONS  
FOR ACTION: Readoption with amendments  
AUTHORITY: N.J.S.A. 18A:35-15 to 26  
SUNSET DATE: September 16, 2015

### **Summary**

The Department of Education (Department) proposes to readopt with amendments N.J.A.C. 6A:15, Bilingual Education, as the chapter is scheduled to expire on September 16, 2015.

The requirement for school districts to provide bilingual education services is established in State law, N.J.S.A. 18A:35-15 to 26. The law mandates that school districts establish bilingual education programs when the enrollment of limited English proficient (LEP) students in any single language group reaches or exceeds 20 students. Bilingual education programs are required to prepare students to transition into mainstream programs and meet the standards of the regular public school curriculum to “ensure educational opportunity to every child” at that beginning of the school year.

The rules proposed for readoption maintain the focus on achieving results for LEP students, while holding school districts accountable for the results. The rules proposed for readoption with amendments also provide flexibility in the design of bilingual/English as a second language (ESL) services based on the needs of LEP student populations at the school district level and require the development of bilingual and ESL curricula correlated to the State’s academic standards. The chapter also addresses the provision by school districts of developmentally appropriate instruction to eligible preschool LEP students.

The Department proposes amendments throughout the chapter to replace “limited English proficient students” or “LEP students” with “English language learner” or “ELL” to reflect the term currently used for students whose native language is other than English.

As amendments to the chapter were adopted in 2014, the readoption of this chapter includes minor proposed amendments to update the chapter. The proposed amendments will include a definition of “district board of education” that explicitly includes charter schools as recommended by commenters during the 2014 rulemaking’s comment period. The proposed amendments also will align the chapter with Federal requirements for the parental notification of students identified for bilingual, ESL, and English language services programs.

Unless otherwise specified, all other amendments are proposed for grammatical and stylistic improvements.

The following summary provides an overview of each section and the proposed amendments:

#### **N.J.A.C. 6A:15-1.1 General requirements**

This section describes the purpose of the rules and identifies the parties to whom they apply.

The Department proposes an amendment at N.J.A.C. 6A:15-1.1(b), which says the chapter applies to all district boards of education providing funded educational programs and services to LEP students, to delete “funded.” The proposed amendment will provide consistency with the School Funding Reform Act (SFRA) of 2008, which no longer provides categorical funds for the provision of bilingual education.

#### **N.J.A.C. 6A:15-1.2 Definitions**

This section defines the terms that will be used throughout the chapter.

The Department proposes an amendment to replace the term “are provided” with “receive” in the definition of “bilingual tutorial program” when referencing the one period of instruction in a content area required for graduation and the second period of tutoring in another required content area that students receive from the district. The use of active voice, rather than passive voice, clarifies that students are the recipients of the tutorial services, and results in grammatical and stylistic improvements.

The Department proposes a definition for “district board of education” to mean the “provider of publicly funded preschool, elementary, and secondary education programs, including a district board of education, charter school board of trustees, State agency, or other public education agency that acts as the school district of residence for the location, identification, evaluation, determination of eligibility, and provision of a free and appropriate public education to ELLs, except as defined otherwise.” The proposed definition explicitly includes charter schools to clarify charter schools are required to comply with the chapter’s rules.

The Department proposes an amendment to the definition of “English as a second language program” to replace “up to two periods” in the first sentence with “at least one period.” The proposed amendment will allow school districts to offer, based upon students’ needs, more than two periods of ESL instruction per day, but will require school districts to offer a minimum of one period.

The Department proposes a definition for “English language learner” to mean a student whose native language is other than English, and is at varying degrees of English language

proficiency in any of the domains of speaking, reading, writing or listening. The term is synonymous with limited English speaking ability as used in N.J.S.A. 18A:35-15 to 26.

The Department also proposes to delete the definition of “limited English proficient (LEP) students” since LEP is being replaced with ELL.

#### **N.J.A.C. 6A:15-1.3 Identification of eligible limited English proficient (LEP) students**

This section delineates the steps districts must take to identify LEP students.

#### **N.J.A.C. 6A:15-1.4 Bilingual programs for limited English proficient students**

This section sets forth all requirements under which school districts must establish language assistance programs for LEP students in kindergarten to grade 12.

The Department proposes an amendment to N.J.A.C. 6A:15-1.4(a), which requires district boards of education to provide ELLs in kindergarten through grade 12 with the necessary courses and support services to meet the Core Curriculum Content Standards (CCCS) for high school graduation and to offer appropriate instructional programs for eligible preschool ELLs, to replace “N.J.S.A. 18A:7F-4” with “N.J.S.A. 18A:7F-46.” The proposed amendment reflects the current applicable statute. The Department also proposes at N.J.A.C. 6A:15-1.4(a) to update the reference to the New Jersey Preschool Program Implementation Guidelines by replacing “2010” with “2014.”

The Department proposes an amendment to N.J.A.C. 6A:15-1.4(c), which articulates the requirements for ESL programs, to stipulate that school districts’ ESL programs must be at least one period rather than up to two periods. The proposed amendment reflects the current practice of school districts, which is to offer more than two periods of ESL as determined by the needs of students.

The Department proposes an amendment to N.J.A.C. 6A:15-1.4(f), which directs district boards of education to provide ELLs in grades nine through 12 with the sufficient courses and supplemental instructional opportunities to meet the CCCS for graduation and to consult with the Department on acceptable alternatives when sufficient numbers of students are not available to form a bilingual class in a subject area, to replace “plans shall be developed” in the last sentence with “the district board of education shall develop plans” to specify the district board of education is the entity responsible for developing plans to address the instructional needs of ELLs in grades nine through 12. The change also results in grammatical and stylistic improvements.

The Department proposes an amendment to N.J.A.C. 6A:15-1.4(g), which directs district board of education to design programs and services to meet the special needs of ELLs, to replace “additional programs and services shall be designed” with “the district board of education shall design additional programs and services” to specify the district board of education is the entity responsible for designing additional programs and services to meet the special academic and career-readiness needs of ELLs. The change also results in grammatical and stylistic improvements.

#### **N.J.A.C. 6A:15-1.5 Waiver process provided by statute**

This section describes the conditions that entitle a school district to request a waiver from the requirement for a full-time bilingual education program set forth in N.J.A.C. 6A:15-1.4(d)

and defines the conditions in accordance with statute. It also requires the submission of an annual request for a waiver in accordance with the law and describes possible instructional program alternatives to a full-time bilingual program.

#### **N.J.A.C. 6A:15-1.6 Approval procedures**

This section addresses the required submission of school district bilingual, ESL, and English language services program plans.

The Department proposes an amendment to N.J.A.C. 6A:15-1.6(a)lvii, which requires school districts to submit to the Department a plan that includes a budget for the bilingual and ESL program or English language services, to delete the requirement for the budget to indicate how the bilingual categorical aid funds are directly related to the bilingual/ESL program instructional services and materials. The language proposed for deletion refers to the prior funding formula, which provided to each school district categorical aid to educate LEP students. The current funding formula – the School Funding Reform Act (SFRA) -- does not provide a separate aid category for LEP.

#### **N.J.A.C. 6A:15-1.7 Supportive services**

This section ensures that LEP students have access to all educational support services available to other students.

#### **N.J.A.C. 6A:15-1.8 Inservice training**

This section requires school districts to offer inservice programs for bilingual, ESL, and mainstream classroom teachers to help them prepare LEP students to meet the CCCS.

The Department proposes an amendment at N.J.A.C. 6A:15-1.8(a), which mandates school districts develop a plan for in-service training for their bilingual, ESL, and mainstream teachers, to replace “based on their needs and” with “administrators who supervise bilingual/ESL programs as well as administrators and any personnel who observe and evaluate teachers of ELLs. The plan shall.” The proposed amendment will include administrators as participants in the school districts’ in-service training. Another proposed amendment will specify that a school districts’ plan for inservice training must include appropriate assessments for ELLs, in addition to the instructional strategies currently required.

#### **N.J.A.C. 6A:15-1.9 Certification**

This section describes the certification requirements for bilingual and ESL teachers.

#### **N.J.A.C. 6A:15-1.10 Bilingual, ESL, and English language services program enrollment, assessment, exit, and reentry**

This section describes the process for making decisions about student enrollment and exit from bilingual and ESL programs.

#### **N.J.A.C. 6A:15-1.11 Graduation requirements for limited English proficient students**

This section describes the requirements for LEP students to be eligible for high school graduation.

### **N.J.A.C. 6A:15-1.12 Location**

This section establishes the requirement for conducting programs in approved classrooms within the school district's regular school buildings rather than in separate facilities.

### **N.J.A.C. 6A:15-1.13 Notification**

This section establishes the requirements for notifying parents in their native language when their children have been identified for participation in a language assistance program and for informing the parents of their right to decline program services.

The Department proposes an amendment to N.J.A.C. 6A:15-1.13(a), which directs district boards of education to notify parents their child has been identified as eligible for enrollment in a bilingual, ESL, or an English languages services education program, to add the following after the first sentence: "The district board of education shall issue the notification within 30 days of the child's identification." The proposed amendment will provide consistency with Federal regulations that require school districts to notify parents of their child's eligibility for enrollment in a bilingual, ESL, or English language services program within 30 days of the child being identified for eligibility.

The Department proposes N.J.A.C. 6A:15-1.13(a)1 through 8 to specify the contents of school districts' notification to parents that their child has been identified as eligible for enrollment in a bilingual, ESL, or English language services program. The proposed amendment will result in a consistent and comprehensive message to all parents of ELLs in New Jersey, not just to parents of ELLs in school districts that receive Title III funds. The proposed amendment will require the following contents in the notification:

1. Why the student was identified as an ELL;
2. Why the student needs to be placed in a language instructional educational program that will help the student develop and attain English proficiency and meet State academic standards;
3. The student's level of English proficiency, how such level was assessed, and the student's academic level;
4. The method of instruction that the school district will use to serve the student, including a description of other methods of instruction available and how those methods differ in content, instructional goals, and the use of English and a native language, if applicable;
5. How the program will meet the specific needs of the student in attaining English and meeting state standards;
6. The program's exit requirements, the expected rate of transition into a classroom not tailored for ELLs, and, in the case of high school students, the expected rate of graduation; and
7. How the instructional program will meet the objectives of the individualized education program of a student with a disability.

The Department proposes an amendment to N.J.A.C. 6A:15-1.13(c), which requires district boards of education to write progress reports for parents of students in the bilingual and ESL program in the parents' native language unless it can be demonstrated and documented the requirement would place an unreasonable burden on the district board of education, to replace "it can be demonstrated and documented" with "the district board of education can demonstrate and document." The proposed amendment will specify the district board of education is the entity responsible for demonstrating and documenting that the development of written progress reports

in a language other than English presents an unreasonable burden on the school district. The change also results in grammatical and stylistic improvements.

**N.J.A.C. 6A:15-1.14 Joint programs**

This section encourages school districts to establish joint programs and services to serve LEP students.

**N.J.A.C. 6A:15-1.15 Parental involvement**

This section mandates the establishment of a parent advisory committee in school districts that implement bilingual education programs.

**N.J.A.C. 6A:15-1.16 State advisory committee on bilingual education**

This section provides for the establishment of the State advisory committee on bilingual education.

The Department proposes an amendment to N.J.A.C. 6A:15-1.16(a), which requires the establishment of a State advisory committee on bilingual education and stipulates its membership, to add “pursuant to N.J.S.A. 18A:35-24” at the end of the subsection to add the citation for the statute authorizing the committee.

As the Department has provided a 60-day comment period in this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

**Social Impact**

The rules proposed for readoption with amendments apply to the provision of bilingual and ESL services in all public schools. New Jersey has one of the highest immigrant populations in the United States and is one of six states that account for two-thirds of all immigrants. More than 20 percent of all public school students in New Jersey come from homes where a language other than English is spoken. During the 2013-2014 school year, New Jersey school districts enrolled approximately 64,000 ELLs.

ELLs come from homes with diverse languages, cultures, and educational backgrounds and they enroll in schools in urban, suburban, and rural communities. Limited English proficiency presents a barrier to effective participation in school for most ELLs. Upon entry to schools, ELLs must learn the English language competencies that are typical of native English speakers of the same age and must concurrently learn academic content and meet grade-level academic standards.

The rules proposed for readoption with amendments will benefit all ELLs by ensuring district boards of education provide equitable opportunities and appropriate language assistance programs. The rules proposed for readoption with amendments require school districts to design programs to prepare ELLs to meet the CCCS by focusing on the linguistic and academic supports ELLs need to achieve academically. In addition, the rules proposed for readoption with amendments emphasize school district accountability by requiring a uniform measure of the progress students make toward becoming fully proficient in English. Finally, the rules ensure a uniform department policy in how school districts provide language supports to preschool children who come from diverse home language backgrounds.



The rules proposed for readoption with amendments also ensure language assistance programs comply with State and Federal laws. The rules proposed for readoption with amendments also implement current State mandates and comply with the Title VI Civil Rights Act of 1964 and the Elementary and Secondary Education Act (ESEA). The rules proposed for readoption with amendments will ensure school districts comply with State and Federal laws, and implement programs equitably and consistently. The consistency in Statewide rules provides protection and benefit to all ELLs.

The rules proposed for readoption with amendments will have an impact on educators as well as the students who receive the services by permitting greater flexibility to school districts in program design. The impact will be the improvement of services to ELLs, as the rules ensure ELLs' unique needs will be met through language access and support, curricula and materials, instructional and assessment practices, and teacher professional development.

The Department maintains that ELLs will benefit from the focus on high academic standards and increased accountability and anticipates support from the bilingual education community and the professional associations for the rules proposed for readoption with amendments.

### **Economic Impact**

Bilingual education is provided for through State, Federal, and local funding. The SFRA continues to factor needs of ELLs in State aid to school districts. Since 2002, school districts that enroll ELLs also have been eligible to receive, on a per pupil basis, Federal funds under Title III of the ESEA for English language acquisition. In the 2014-2015 school year, New Jersey received an allocation of nearly \$21 million in Title III funds. The State allocates a portion of this funding to school districts that experience a significant increase in the enrollment of immigrant students as compared to the previous two years.

The Department maintains that rules proposed for readoption with amendments will not have any economic impact on school districts since the rules proposed for readoption with amendments do not impose additional substantive requirements on district boards of education or on existing ELL programs.

### **Federal Standards Statement**

Bilingual education is mandated by State law. There is no Federal mandate for bilingual education that supersedes State law. Title III of the ESEA requires school districts receiving Federal funds under Title III to provide high-quality language instruction programs, but does not mandate bilingual education programs. A civil rights requirement, Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.), mandates all language minority students who are LEP to be served in appropriate education programs to help them acquire English skills. The rules proposed for readoption with amendments help school districts meet the Federal requirement.

### **Jobs Impact**

The rules proposed for readoption with amendments will result in neither the generation nor the loss of jobs.

### **Agriculture Industry Impact**

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments impact solely upon New Jersey school districts and on programs operated by the Department.

### **Housing Affordability Impact Analysis**

The rules proposed for readoption with amendments will have no impact on the cost of housing or the number of housing units. The rules proposed for readoption with amendments impact solely upon New Jersey school districts and on programs operated by the Department.

### **Smart Growth Development Impact Analysis**

The rules proposed for readoption with amendments will have no impact on housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan. The rules proposed for readoption with amendments impact solely upon New Jersey school districts and on programs operated by the Department.

**Full text** of the proposed readoption with amendments follows (additions in boldface **thus**; deletions indicated in brackets [thus]):

# N.J.A.C. 6A:15, BILINGUAL EDUCATION

## TABLE OF CONTENTS

### SUBCHAPTER 1. GENERAL PROVISIONS

6A:15-1.1 General requirements

6A:15-1.2 Definitions

6A:15-1.3 Identification of eligible [limited] English [proficient (LEP) students] **language learners**

6A:15-1.4 Bilingual Programs for [limited] English [proficient students] **language learners**

6A:15-1.5 Waiver process provided by statute

6A:15-1.6 Approval procedures

6A:15-1.7 Supportive services

6A:15-1.8 Inservice training

6A:15-1.9 Certification

6A:15-1.10 Bilingual, [ESL] **English as a second language**, and English language services program enrollment, assessment, exit and reentry

6A:15-1.11 Graduation requirements for [limited] English [proficient students] **language learners**

6A:15-1.12 Location

6A:15-1.13 Notification

6A:15-1.14 Joint programs

6A:15-1.15 Parental involvement

6A:15-1.16 State advisory committee on bilingual education

## CHAPTER 15. BILINGUAL EDUCATION

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 6A:15-1.1 General requirements

- (a) The purpose of this chapter is to:
1. Ensure [that] all [limited] English [proficient (LEP) students] **language learners (ELLs)** as defined in this chapter are provided with a free, appropriate public education pursuant to N.J.S.A. 18A:35-15 to 26;
  2. Ensure [that] the rights of [LEP students] **ELLs** are protected;
  3. Ensure the provision of bilingual education and related services;
  4. Assist district boards of education in providing educational services to [LEP students] **ELLs**; and
  5. Ensure the evaluation of the effectiveness of the education of [LEP students] **ELLs**.
- (b) The rules of this chapter shall apply to all district boards of education providing [funded] educational programs and services to [LEP students] **ELLs**.
- (c) The Department shall:
1. Administer the provisions of this chapter;
  2. Provide technical assistance to each district board of education in the implementation of bilingual, ESL, and English language services programs; and
  3. Coordinate and monitor in conjunction with the county offices of education the local, State and Federal programs designed to meet the educational needs of [LEP students] **ELLs**.

## **6A:15-1.2 Definitions**

The following words and terms shall have the following meanings when used in this chapter unless the context clearly indicates otherwise.

“Bilingual education program” means a full-time program of instruction in all courses or subjects that a child is required by law or rule to receive, given in the native language of [LEP students] **ELLs** enrolled in the program and also in English; in the aural comprehension, speaking, reading, and writing of the native language of [LEP students] **ELLs** enrolled in the program, and in the aural comprehension, speaking, reading, and writing of English; and in the history and culture of the country, territory, or geographic area that is the native land of the parents of [LEP students] **ELLs** enrolled in the program, and in the history and culture of the United States.

“Bilingual part-time component” means a program alternative in which students are assigned to mainstream English program classes, but are scheduled daily for their developmental reading and mathematics instruction with a certified bilingual teacher.

“Bilingual resource program” means a program alternative in which students receive, on an individual basis, daily instruction from a certified bilingual teacher in identified subjects and with specific assignments.

“Bilingual tutorial program” means a program alternative in which students [are provided] receive one period of instruction from a certified bilingual teacher in a content area required for graduation and a second period of tutoring in other required content areas.

“CCCS” means as defined in N.J.A.C. 6A:8-1.3.

**"District board of education" means the provider of publicly funded preschool, elementary, and secondary education programs, including a district board of education, charter school board of trustees, State agency, or other public education agency that acts as the school district of residence for the location, identification, evaluation, determination of eligibility, and provision of a free and appropriate public education to ELLs, except as defined otherwise.**

“Dual-language bilingual education program” means a full-time program of instruction in elementary and secondary schools that provides structured English language instruction and instruction in a second language in all content areas for [LEP students] ELLs and for native English speaking students enrolled in the program.

“Educational needs” means the particular educational requirements of [LEP students,] ELLs; the fulfillment of which will provide them with equal educational opportunities.

“English as a second language (ESL) program” means a daily developmental second-language program of [up to two periods] **at least one period** of instruction based on student language proficiency that teaches aural comprehension, speaking, reading, and writing in English using second language teaching techniques, and incorporates the cultural aspects of the students' experiences in their ESL instruction. A period is the time allocated in the school schedule for instruction in core subjects.

“English language development standards” means the 2012 Amplification of the English Language Development Standards, Kindergarten-Grade 12, incorporated herein by reference, as amended and supplemented, developed by the World-Class Instructional Design and Assessment (WIDA) Consortium. They are the standards and language competencies [LEP students] ELLs

in preschool programs and elementary and secondary schools need to become fully proficient in English and to have unrestricted access to grade-appropriate instruction in challenging academic subjects. The standards are published by the Board of Regents of the University of Wisconsin System, on behalf of the WIDA Consortium ([www.wida.us](http://www.wida.us)) and are available for review at <http://www.wida.us/standards/eld.aspx>.

**“English language learner” or “ELL” means a student whose native language is other than English. The term refers to students with varying degrees of English language proficiency in any one of the domains of speaking, reading, writing, or listening and is synonymous with limited English speaking ability as used in N.J.S.A. 18A:35-15 to 26.**

“English language proficiency test” means a test that measures English language skills in the areas of aural comprehension, speaking, reading, and writing.

“English language services” means services designed to improve the English language skills of [LEP students] ELLs. The services, provided in school districts with less than 10 [LEP students] ELLs, are in addition to the regular school program and are designed to develop aural comprehension, speaking, reading, and writing skills in English.

“Exit criteria” means the criteria that must be applied before a student may be exited from a bilingual, ESL, or English language services education program.

“High-intensity ESL program” means a program alternative in which students receive two or more class periods a day of ESL instruction. One period is the standard ESL class, and the other period is a tutorial or ESL reading class.

“Instructional program alternative” means a part-time program of instruction that may be established by a district board of education in consultation with and approval of the Department. All students in an instructional program alternative receive English as a second language.

[“Limited English proficient (LEP) students” means students from preschool through grade 12 whose native language is other than English and who have sufficient difficulty speaking, reading, writing, or understanding the English language as measured by an English language proficiency test, so as to be denied the opportunity to learn successfully in classrooms where English is the language of instruction. This term means the same as limited English speaking ability as used in N.J.S.A. 18A:35-15 to 26.]

“Native language” means the language first acquired by the student, the language most often spoken by the student, or the language most often spoken in the student’s home regardless of the language spoken by the student.

“Parent(s)” means the natural parent(s) or the legal guardian(s), foster parent(s), surrogate parent(s), or person acting in the place of a parent with whom the student legally resides. When parents are separated or divorced, parent means the person(s) who has legal custody of the student, provided such parental rights have not been terminated by a court of appropriate jurisdiction.

“Review process” [is] **means** the process established by the district board of education to assess [LEP students] ELLs for exit from bilingual, ESL, or English language services programs.

“Sheltered English instruction” [is] **means** an instructional approach used to make academic instruction in English understandable to [LEP students] ELLs. Sheltered English classes are



taught by regular classroom teachers who have received training on strategies to make subject-area content comprehensible for [LEP students] ELLs.

**6A:15-1.3 Identification of eligible [limited] English [proficient (LEP) students] language learners**

- (a) The district board of education shall determine at the time of enrollment the native language of each [LEP student] ELL. Each district board of education shall:
1. Maintain a census indicating all identified students whose native language is other than English; and
  2. Develop a screening process, initiated by a home-language survey, to determine which students in kindergarten to 12th grade, of those whose native language is other than English, must be tested to determine English language proficiency. The screening shall be conducted by a bilingual/ESL or other certified teacher and shall be designed to distinguish students who are proficient English speakers and need no further testing.
- (b) The district board of education shall determine the English language proficiency of all kindergarten to 12th-grade students who are not screened out and whose native language is other than English by administering a Department-approved English language proficiency test, assessing the level of reading in English, reviewing the previous academic performance of students, including their performance on standardized tests in English, and reviewing the input of teaching staff members responsible for the educational program for [LEP students] ELLs. Students who do not meet the Department standard on a Department-approved language proficiency test and who have at least one other indicator shall be considered [LEP students] ELLs. The district board of education shall also use age-appropriate methodologies to identify [LEP] preschool [students]

ELLs to determine their individual language development needs.

**6A:15-1.4 Bilingual programs for [limited] English [proficient students] language learners**

- (a) The district board of education shall provide all kindergarten to 12th-grade [LEP students] ELLs enrolled in the school district pursuant to N.J.S.A. 18A:7F-46 with all required courses and support services defined in (b) through (h) below to prepare [LEP students] ELLs to meet the CCCS for high school graduation. This may also include tutoring, after school programs, summer programs, and remedial services as needed by [LEP students] ELLs. All district boards of education shall also provide appropriate instructional programs to eligible preschool [LEP students] ELLs based on need according to the New Jersey Preschool Program Implementation Guidelines, [2010] 2014. The guidelines provide developmentally appropriate recommendations for good practice and are intended for school districts that provide preschool programs.
- (b) The district board of education shall establish English language services designed to improve the English language proficiency of [LEP students] ELLs whenever there are at least one, but fewer than 10, [LEP students] ELLs enrolled in the school district. English language services shall be provided in addition to the regular school program.
- (c) The district board of education shall establish an ESL program that provides [up to two periods] **at least one period** of ESL instruction based on student language proficiency whenever there are 10 or more [LEP students] ELLs enrolled in the school district.
1. An ESL curriculum that addresses the WIDA English language development standards[,] shall be developed and adopted by the district board of education to address the instructional needs of [LEP students] ELLs.
  2. The ESL curriculum shall be cross referenced to the school district's bilingual education and content area curricula to ensure that ESL instruction is correlated to

all content areas taught.

- (d) The district board of education shall establish bilingual education programs whenever there are 20 or more [LEP students] **ELLs** in any one language classification enrolled in the school district, pursuant to N.J.S.A. 18A:35-18. Bilingual education programs shall:
1. Be designed to prepare [LEP students] **ELLs** to acquire sufficient English skills and content knowledge to meet the CCCS. All [LEP students] **ELLs** participating in bilingual programs shall also receive ESL instruction;
  2. Include a curriculum that addresses the CCCS, the WIDA English language development standards, and the use of two languages. The bilingual education curriculum shall be adopted by the district board of education; and
  3. Include the full range of required courses and activities offered on the same basis and under the same rules that apply to all students within the school district.
- (e) [LEP students] **ELLs** shall be provided with equitable instructional opportunities to participate in all non-academic courses necessary to meet the CCCS, including comprehensive health and physical education, the visual and performing arts, and career awareness programs. The instructional opportunities shall be designed to assist [LEP students] **ELLs** to fully comprehend all subject matter and demonstrate their mastery of content matter.
- (f) The district board of education shall offer sufficient courses and other relevant supplemental instructional opportunities in grades nine through 12 to enable [LEP students] **ELLs** to meet the CCCS for graduation. When sufficient numbers of students are not available to form a bilingual class in a subject area, **the district board of education shall develop** plans [shall be developed] in consultation with and approved by the Department to meet the needs of the students.
- (g) In addition to (a) through (f) above, **the district board of education shall design** additional programs and services [shall be designed] to meet the special needs of eligible

[LEP students] ELLs and include, but not be limited to, remedial instruction through Title I programs; special education; school-to-work programs; computer training; and gifted and talented education services.

- (h) A district board of education may establish dual-language bilingual education programs in its schools and may make provisions for the coordination of instruction and services with the school district's world languages program. Dual-language bilingual education programs shall also enroll students whose primary language is English, and shall be designed to help students achieve proficiency in English and in a second language while mastering subject-matter skills. To the extent necessary, instruction shall be in all courses or subjects of study that allow students to meet all grade promotion and graduation standards. Where possible, classes in dual-language bilingual programs shall be comprised of approximately equal numbers of [students of limited English proficiency] ELLs and of students whose native language is English.
- (i) The district board of education may establish a program in bilingual education for any language classification with fewer than 20 pupils.

**6A:15-1.5 Waiver process provided by statute**

- (a) A school district may request a waiver from N.J.A.C. 6A:15-1.4(d) to establish annually an instructional program alternative with the approval of the Department when there are 20 or more students eligible for the bilingual education program in grades kindergarten through 12, and the school district is able to demonstrate that it would be impractical to provide a full-time bilingual program due to the age range, grade span, and/or geographic location of eligible students.
  - 1. Instructional program alternatives shall be developed in consultation with and approved annually by the Department after review of student enrollment and

achievement data. All bilingual instructional program alternatives shall be designed to assist [LEP students] ELLs to develop sufficient English skills and subject-matter skills to meet the CCCS.

2. The instructional program alternatives that shall be established include, but are not limited to: the bilingual part-time component; the bilingual resource program; the bilingual tutorial program; the sheltered English instruction program; and the high-intensity ESL program.
3. District boards of education implementing program alternatives annually shall submit student enrollment and achievement data that demonstrate the continued need for the programs.

#### **6A:15-1.6 Approval procedures**

- (a) Each school district providing a bilingual program, ESL program, or English language services shall submit a plan every three years to the Department of Education for approval. At its discretion, the Department may request modifications, as appropriate.
  1. Plans submitted by each district board of education for approval shall include information on the following:
    - i. Identification of students;
    - ii. Program description;
    - iii. The number of certified staff hired for the program;
    - iv. Bilingual and ESL curriculum development;
    - v. Evaluation design;
    - vi. Review process for exit; and
    - vii. A budget for the bilingual and ESL program or English language services.  
[The budget must indicate how the bilingual categorical aid funds are

directly related to the bilingual/ESL program instructional services and materials.]

- (b) The Department will establish procedures for monitoring and evaluation of district bilingual/ESL programs by means of its district and school accountability process.

#### **6A:15-1.7 Supportive services**

- (a) Students enrolled in bilingual, ESL, and English language services programs shall have full access to educational services available to other students in the school district.
- (b) To the extent that is administratively feasible, supportive services to [LEP students] **ELLs**, such as counseling, tutoring, and career guidance, should be provided by bilingual personnel who are familiar with and knowledgeable of the unique needs and background of the [LEP students] **ELLs** and their parents.

#### **6A:15-1.8 Inservice training**

- (a) The district board of education shall develop a plan for inservice training for bilingual, ESL, and mainstream teachers [based on their needs and]; **administrators who supervise bilingual/ESL programs; administrators and any personnel who observe and evaluate teachers of ELLs. The plan shall include instructional strategies and appropriate assessments** to help [LEP students] **ELLs** meet the CCCS and the WIDA English language development standards. All bilingual and ESL teachers shall receive training in the use of the ESL curriculum.
- (b) The Professional Development Plan of the school district shall include the needs of bilingual and ESL teachers, which shall be addressed through inservice training.

### **6A:15-1.9 Certification**

- (a) All teachers of bilingual classes shall hold a valid New Jersey instructional certificate with an endorsement for the appropriate grade level and/or content area, as well as an endorsement in bilingual education, pursuant to N.J.S.A. 18A:6-38 et seq. and 18A:35-15 to 26.
- (b) All teachers of ESL classes shall hold a valid New Jersey certificate in ESL pursuant to N.J.S.A. 18A:6-38 et seq. and N.J.A.C. 6A:9B-10.5.
- (c) All teachers providing English language services shall hold a valid New Jersey instructional certificate.

### **6A:15-1.10 Bilingual, [ESL] English as a second language, and English language services program enrollment, assessment, exit, and reentry**

- (a) All [LEP students] ELLs from kindergarten through grade 12 shall be enrolled in the bilingual, ESL, or English language services education program established by the school district board of education as prescribed in N.J.A.C. 6A:15-1.4(b) through (e) and 1.5(a), and P.L. 1995, c. 59 and c. 327.
- (b) Students enrolled in the bilingual, ESL, or English language services program shall be assessed annually using a Department-approved English language proficiency test to determine their progress in achieving English language proficiency goals and readiness for exiting the program.
- (c) [LEP students] ELLs enrolled in the bilingual, ESL, or English language services program shall be placed in a monolingual English program when they have demonstrated readiness to function successfully in an English-only program. The process to determine the readiness or inability of the individual student to function successfully in the English-

only program shall be initiated by the student's level of English proficiency as measured by a Department-established standard on an English language proficiency test[, and the]. **The** readiness of the student shall be further assessed on the basis of multiple indicators that shall include, at a minimum: classroom performance; the student's reading level in English; the judgment of the teaching staff member or members responsible for the educational program of the student; and performance on achievement tests in English.

- (d) A parent or guardian may remove a student who is enrolled in a bilingual education program pursuant to provisions in P.L. 1995 c. 327.
- (e) Newly exited students who are not progressing in the mainstream English program may be considered for reentry to bilingual and ESL programs as follows:
  - 1. After a minimum of one-half an academic year and within two years of exit, the mainstream English classroom teacher may recommend retesting with the approval of the principal.
  - 2. A waiver of the minimum time limitation may be approved by the executive county superintendent upon request of the chief school administrator if the student is experiencing extreme difficulty in adjusting to the mainstream program.
  - 3. The recommendation for retesting shall be based on the teacher's judgment that the student is experiencing difficulties due to problems in using English as evidenced by the student's inability to: communicate effectively with peers and adults; understand directions given by the teacher; and/or comprehend basic verbal and written materials.
  - 4. The student shall be tested using a different form of the test or a different language proficiency test than the one used to exit the student.
  - 5. If the student scores below the State-established standard on the language proficiency test, the student shall be reenrolled into the bilingual or ESL program.



- (f) When the review process for exiting a student from a bilingual, ESL, or English language services program has been completed, the district board of education shall notify by mail the student's parent(s) or legal guardian of the placement determination. If the parent(s), guardian, or teaching staff member disagrees with the placement, he or she may appeal the placement to the Commissioner, pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6A:3, after exhausting the school district's appeal process.

**6A:15-1.11 Graduation requirements for [limited] English [proficient students] language learners**

All [LEP students] ELLs shall satisfy requirements for high school graduation according to N.J.A.C. 6A:8-5.1(a).

**6A:15-1.12 Location**

All bilingual, ESL, and English language services programs shall be conducted within classrooms within the regular school buildings of the school district pursuant to N.J.S.A. 18A:35-20.

**6A:15-1.13 Notification**

- (a) Each district board of education shall notify by mail the parents of [LEP students] ELLs of the fact that their child has been identified as eligible for enrollment in a bilingual, ESL, or English language services education program. **The district board of education shall issue the notification within 30 days of the child's identification.** Notice shall include a statement that the parents may decline their child's enrollment in a bilingual

program, and they shall be given an opportunity to do so if they choose. The notice shall be in writing and in the language in which the parent(s) possesses a primary speaking ability, and in English[.], and shall include the following information:

1. **Why the student was identified as an ELL;**
  2. **Why the student needs to be placed in a language instructional educational program that will help him or her develop and attain English proficiency and meet State academic standards;**
  3. **The student's level of English proficiency, how the level of English proficiency was assessed, and the student's academic level;**
  4. **The method of instruction the school district will use to serve the student, including a description of other instruction methods available and how those methods differ in content, instructional goals, and the use of English and a native language, if applicable;**
  5. **How the program will meet the student's specific needs in attaining English and meeting State standards;**
  6. **The program's exit requirements, the expected rate of transition into a classroom not tailored for ELLs, and, in the case of high school students, the expected rate of graduation; and**
  7. **How the instructional program will meet the objectives of the individualized education program of a student with a disability.**
- (b) Each district board of education shall send progress reports to parent(s) of students enrolled in bilingual, ESL, or English language services programs in the same manner and frequency as progress reports are sent to parent(s) of other students enrolled in the school district.
- (c) Progress reports shall be written in English and in the native language of parent(s) of students enrolled in the bilingual and ESL program unless [it] the board of education

can [be] demonstrate[d] and document[ed] in the three-year plan required in N.J.A.C. 6A:15-1.6(a) that the requirement would place an unreasonable burden on the district board of education.

- (d) Each district board of education shall notify the parent(s) when students meet the exit criteria and are placed in a monolingual English program. The notice shall be in English and in the language in which the parent(s) possesses a primary speaking ability.

#### **6A:15-1.14 Joint programs**

With approval of the executive county superintendent on a case-by-case basis, a school district may join with another district board of education to provide bilingual, ESL, or English language services programs.

#### **6A:15-1.15 Parental involvement**

- (a) Each district board of education shall provide for the maximum practicable involvement of parent(s) of [LEP students] **ELLs** in the development and review of program objectives and dissemination of information to and from the district boards of education and communities served by the bilingual, ESL, or English language services education programs.
- (b) Each district board of education implementing a bilingual education program shall establish a parent advisory committee on bilingual education of which the majority membership shall be parent(s) of [LEP students] **ELLs**.

#### **6A:15-1.16 State advisory committee on bilingual education**

- (a) The State Board of Education shall establish a State advisory committee on bilingual education. The Commissioner shall appoint the members of the committee with representation from parents, institutions of higher education, bilingual and ESL teachers, school board members, school administrators, and lay persons **pursuant to N.J.S.A. 18A:35-24.**
- (b) The committee shall advise the Department in the formulation of policies and procedures relating to P.L. 1974, c. 197 (N.J.S.A. 18A:35-15 to 26).