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First Discussion
June 3, 2015

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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 re-adoption 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 rule and identifies the parties to whom it applies.

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 for 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 amendments 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 who is in the process of learning English. The term refers to students with varying degrees of English language proficiency from minimal to

fluent, and 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 Required 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(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)1vii, 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 program plan 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 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.

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 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 rule 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 re adoption 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, an enrollment that has almost doubled in the past 20 years.

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 Analysis

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

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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) 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 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, 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] **ELL** preschool students

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 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 include instructional strategies 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.

- (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 demonstrated] **demonstrate** and [documented] **document** 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).