

Proposed Amendments at N.J.A.C. 6A:15, Bilingual Education

The following is the accessible version of the proposed amendments at N.J.A.C. 6A:15. The adoption level document includes three sections – [comment/response form](#), [summary](#) and [rule text](#).

**State Board of Education
Administrative Code
Comment/Response Form**

This comment and response form contains comments from the December 1, 2021, meeting of the State Board of Education when the rulemaking was considered at Proposal Level.

Topic: Bilingual Education **Meeting Date:** June 1, 2022
Code Citation: N.J.A.C. 6A:15 **Level:** Adoption
Division: Educational Services **Completed by:** Division of Educational Services

Summary of Comments and Agency Responses:

The following is a summary of the comments received from the public and the Department of Education's (Department) responses. Each commenter is identified at the end of the comment by a number that corresponds to the following list:

1. Grace Ko
2. Jessica Hunsdon, Executive Board Member, New Jersey Teachers of English to Speakers of Other Languages/New Jersey Bilingual Educators (NJTESOL/NJBE)
3. Kathleen Fernandez, Executive Director, NJTESOL/NJBE
4. Margaret Churchill
5. Maria Stiuso
6. Joan Pujol
7. Juliane Bilotta
8. Michelle Land
9. Monika Lubera
10. Joyce Farr, English as a second language (ESL) teacher
11. Christine Miles, Ed.D., Associate Director, Professional Development and Instructional Issues, New Jersey Education Association
12. Diana Autin, Executive Director, Statewide Parent Advocacy Network (SPAN), and Amy Torres, Executive Director, New Jersey Alliance for Immigrant Justice (NJAIJ)
13. Elsa Wajda, ESL teacher
14. Jessie Curtis
15. Gail Verdi

16. Tasha Austin
17. Laura Arredondo, Supervisor, World Languages and English Language Learner Programs, Hunterdon Central Regional High School
18. Jean Public
19. Kathleen Fernandez, Executive Director, NJTESOL/NJBE; Lady Jimenez Torres, New Jersey Consortium for Immigrant Children, and Elizabeth Athos and Jessica Levin, Education Law Center

1. **Comment:** The commenters stated that the proposed amendments at N.J.A.C. 6A:15 do not go far enough in increasing educational equity for all students. **(1 through 10 and 12 through 16)**

Response: The Department appreciates the comment and agrees that educational equity is important for all students. The Department disagrees with the commenters that N.J.A.C. 6A:15 does not increase educational equity for English language learners (ELLs).

2. **Comment:** The commenter stated that significant additional changes are essential to align N.J.A.C. 6A:15 with existing law and to rectify substantial inequities in the education of ELLs in New Jersey that have existed for years and were exacerbated by the pandemic. The commenter also stated that some of the necessary changes are in Federal guidance on effectuating the legal rights of ELLs but are not at N.J.A.C. 6A:15. The commenter further stated this makes implementation of the recommended changes all the more urgent to remedy a lack of alignment with Federal policies that ensure ELLs and their families receive the educational services and opportunities to which they are legally entitled. **(19)**

Response: The Department disagrees that additional changes to the rulemaking are necessary because the proposed amendments at N.J.A.C. 6A:15 specifically incorporate, and are aligned to, the Federal Every Student Succeeds Act (ESSA).

3. **Comment:** The commenters recommended the Department amend N.J.A.C. 6A:15-1.2 and 1.4(c) to develop a clear and comprehensive definition of language accommodations, including first and target language supports that provide access to content concepts. The commenters suggested additional amendments at N.J.A.C. 6A:15-1.4(c) to require language accommodations, including, but not limited to, language objectives and strategies, in every classroom with ELLs to provide access to grade-level content. **(1 through 10, 12 through 16 and 19)**

Response: The Department disagrees that the commenters' recommended changes are necessary. The Department has issued the Danielson/ELL Crosswalk resource to support school districts in providing language supports in accessing content concepts and developing language objectives in the classroom. The Department will review and update the resource, as necessary, to include updated evidence-based research. Guidance within the resource adequately addresses the commenters' concerns.

4. **Comment:** The commenter stated that the Department's previous response to Comment 3, which also was submitted by the commenter prior to the State Board of Education's consideration of the rulemaking at proposal level, is not sufficient because the Danielson/ELL Crosswalk tool is solely meant to be a companion to the Danielson Framework classroom observation instrument for bilingual/English as a second language (ESL) teachers. The commenter also stated that the framework does not adequately address the recommendation for implementing language accommodations in every

classroom where ELLs are students. The commenter further stated that recommendations relate not to whether school districts have access to a resource that can assist them in providing language supports, which is welcomed, but rather to the lack of a legally binding definition of, and requirement for, language accommodations at N.J.A.C. 6A:15. The commenter also stated that the addition is crucial to affirm the importance of such accommodations and to ensure they are implemented Statewide. (19)

Response: The commenter’s recommendations are outside the scope of the rulemaking, which includes a proposed new definition for “alternate English language proficiency assessment” and amendments to the existing definitions for “English language proficiency test” and “native language” at N.J.A.C. 6A:15-1.2, as well as amendments at N.J.A.C. 6A:15-1.3 and 1.10. The Department also maintains that its two resources – Daniels/ELL Crosswalk and related scaffolds -- support school districts in providing language supports in accessing content concepts and developing language objectives in the classroom.

5. **Comment:** The commenter requested that the Department use “emergent bilingual student,” as opposed to “English learner,” “English language learner” (ELLs), or other terms that do not recognize that a student whose first or primary language is not English is not only a student who is learning English but is a student who already knows one language and is becoming bilingual. (12)

Response: The Department declines to adopt the requested change because it is outside the scope of the rulemaking. The only proposed amendments at N.J.A.C. 6A:15-1.2 are a new definition for “alternate English language proficiency assessment” and amendments to the existing definitions for “English language proficiency test” and “native language.”

6. **Comment:** The commenter requested an amendment at N.J.A.C. 6A:15-1.2 to ensure that emergent bilingual students explicitly include preschoolers. The commenter stated that this is important to ensure that school districts understand that preschoolers can be emergent bilingual students, and that they are entitled to the protections at N.J.A.C. 6A:15, including requirements for notification and translation of progress reports. The commenter also stated that it will ensure that preschoolers are counted when determining whether a school district has the requisite number of students to trigger the bilingual education program requirement at N.J.A.C. 6A:15-1.4(d). (12)

Response: The Department disagrees that the change is necessary because preschoolers are included at existing N.J.A.C. 6A:13-5.1(a)1, which ensures systematic support for language acquisition for all children.

7. **Comment:** The commenter asked for clarification of the second sentence at existing N.J.A.C. 6A:15-1.3(a)2, which requires the ELL screening to be conducted by a bilingual/ESL or other certified teacher and to be designed to distinguish students who are proficient English speakers and need no further testing. The Department proposes to replace “screening” with “Statewide home language survey” and “conducted” with “administered,” respectively. The commenter stated that a school district can administer the home language survey in several ways, including providing it to a parent/guardian with student registration materials, having the parent/guardian complete the survey and submit it to the school district, and then reviewing the submitted survey. The commenter asked if it is sufficient, in this scenario, for the survey to be reviewed by an ESL certified teacher. The commenter also stated that if it is not sufficient, requiring the survey to be administered by a ESL certified teacher for every student registering in the school district will be a cumbersome registration requirement. (17)

Response: The Department disagrees that it is cumbersome on school districts to have

the home language survey administered by a bilingual/ESL or other certified teacher. Bilingual/ESL teachers are most knowledgeable about second language acquisition and have training and background knowledge that enables them to distinguish which students may or not be English proficient. However, it is permissible for a bilingual/ESL or other certified teacher to review a home language survey that was completed by parents/guardians and submitted to the school district.

8. **Comment:** The commenters recommended that the Department develop and institute at N.J.A.C. 6A:15-1.6(b) a formal compliance and accountability process to ensure implementation of the chapter's requirements. **(1 through 10, 12 through 16 and 19)**

Response: The Department declines to make the requested change because it is outside the scope of the rulemaking. The Department is committed to improving transparency and accountability for all school districts. For the 2021-2022 school year, the Department revised the submission process for school district ELL three-year plans. The new electronic format will allow the Department to review the plans and analyze data regarding how New Jersey schools are meeting the chapter's requirements. The Department will report this analysis to school districts in a State-of-the-State report that may inform improvements in policy and practice at the school, district, and State levels. In addition, the Department is committed to reporting on its website the approval status of a school district's three-year plan, similar to the reporting of approved waivers of N.J.A.C. 6A:15-1.4(d), which requires full-time bilingual education for school districts that enroll 20 or more students that are in any one language classification.

9. **Comment:** The commenter stated that the process the Department uses to develop the compliance and accountability measures must engage multiple stakeholders who have an interest in the chapter's proper implementation. The commenter also stated that the compliance and accountability measures could include a public report on the three-year plan's effectiveness at the midway point and at the end of the plan. The commenter stated that demonstration of compliance must include a robust evaluation of school districts' required three-year plans not only when they are first submitted to, and approved by, the Department, but also to determine fidelity of implementation and effectiveness in serving a school district's ELL population. The commenter also suggested that the measures include additional points as part of the Department's monitoring under the Quality Single Accountability Continuum (QSAC) and/or a letter of determination addressing full implementation of N.J.A.C. 6A:15 as presented in a school district's three-year plan. The commenter further stated that, without proper mechanisms in place to ensure compliance, ELLs and their families will continue to be underserved by school districts that are not fulfilling their legal obligations. While the commenter expressed appreciation for the Department's efforts in this area, the commenter remain concerned that the cited revisions to the submission process for school districts' ELL three-year plans are inadequate to fully meet the Department's stated commitment to transparency and accountability. Although the new format will make it easier for the Department to review the three-year plans, the commenter stated it does little to address several of the organizations' substantive concerns. The commenter suggested that the Department institute formal and transparent measures to ensure school districts comply with the chapter, including a process of robust evaluation of school districts' required three-year plans – not just when submitted but also midway and at the end of the three year period – to determine fidelity of implementation and effectiveness in serving the district's ELL population. The commenter further suggested that the Department develop and implement these accountability systems with the engagement of multiple stakeholders who have an interest in the chapter's proper implementation (including educators, parents and caregivers, Statewide and local

advocacy groups, and community members). (19)

Response: The Department agrees that stakeholder input is an important component of ensuring compliance with Chapter 15 and regularly engages stakeholders through the Bilingual Advisory Council. The Department disagrees that a robust evaluation of school districts' three-year plans to determine plan fidelity is necessary because school districts need sufficient time to implement their plans prior to any evaluation being conducted. The Department also disagrees that additional points are needed under QSAC and/or a letter of determination is needed to determine fidelity. The Department will provide resources and technical assistance for school districts to evaluate the effectiveness of their plans during the midway and end points of plan implementation. The midway point is a reasonable timeframe in which to evaluate the plans since the plans span a three-year time period and school districts' ELL programs and populations may change over that time period. School districts may need to amend or update their plans to reflect the outcome of their evaluations.

10. **Comment:** The commenters requested that the Department establish, at N.J.A.C. 6A:15-1.6 or somewhere else in the chapter, a complaint investigation system for violations of laws protecting ELLs, comparable to that which exists for special education at N.J.A.C. 6A:14-9.2. (1 through 10, 12 through 16 and 19)

Response: The Department declines to make the recommended change because it is outside the scope of the rulemaking. Parents and stakeholders may submit complaints directly to the Office of Supplemental Educational Programs via email (ELL@doe.nj.gov and parents@doe.nj.gov). The Department responds via email to all complaints submitted to ensure a resolution is reached.

11. **Comment:** The commenter stated that the complaint system should allow parents and other stakeholders to alert the Department about violations of N.J.A.C. 6A:15 and laws that protect ELLs' rights. The commenter asserted that even though parents and stakeholders may submit concerns about violations of laws protecting ELLs directly to the Department through two specific email addresses, the Office of Supplemental Educational Programs does not clearly communicate a formal process for investigating complaints or for issuing corrective action requirements. The commenter also stated that the number of relevant concerns and the seriousness of them have been well documented in its report *English Learners in New Jersey: Exposing Inequities and Expanding Opportunities in the Wake of the Pandemic* and in the recent settlement between the Newark School District and the United States Department of Justice. The commenter further stated that the recommendation for a formal complaint investigation system must be addressed immediately in alignment with the Department's stated commitment to improved accountability and transparency. (19)

Response: The Department disagrees that a formal complaint process is necessary as the current system does allow for parents and other stakeholders to alert the Department about alleged violations of Chapter 15. The Department works directly with parents, stakeholders, and school districts to address concerns that are submitted to the Department. Parents and stakeholders may submit complaints directly to the Office of Supplemental Educational Programs via email (ELL@doe.nj.gov and parents@doe.nj.gov). The Office of Supplemental Educational Programs formally responds to all received complaints via email.

12. **Comment:** The commenters requested that the Department amend N.J.A.C. 6A:15-1.7 to assist students and families with accessing technology and internet services with training that is linguistically and logistically accessible. (1 through 10, 12 through 16, and 19)

Response: The Department declines to make the requested changes because they are outside the scope of the proposed amendments at N.J.A.C. 6A:15-1.7.

13. **Comment:** The commenter stated that, as part of supportive services for ELLs and in alignment with Federal law, ELLs and their families must be able to meaningfully participate equally and fully in all curricular and extracurricular programs, which includes access to technology used during and after the COVID-19 pandemic. The commenter also stated that a one-time, \$54 million formula grant for school districts might have helped address technology and access needs up to the time when the Department collected the data (January 6 through March 3, 2021), but the Department must commit resources to sustaining the access beyond the COVID-19 pandemic. The commenter further stated that the Department must provide training that supports technology use that is accessible, linguistically and logistically, for ELLs and their parents or guardians. (19)

Response: The Department declines to make the requested changes because they are outside the scope of the rulemaking. The Department agrees that it is important to provide school districts and families with information and communications that are in multiple languages and an accessible format. Whenever possible, the Department posts on its website written guidance in multiple languages. Additionally, the Department works with each school district to ensure that it is providing resources and access to parents, including translation and interpreter services when needed

14. **Comment:** The commenters requested an amendment at N.J.A.C. 6A:15-1.7(b) to require school districts to offer linguistically and culturally appropriate mental health and counseling services to ELLs. (1 through 10, 12 through 16, and 19)

Response: The Department agrees that providing mental health and counseling services to all students, including ELLs, is important. To support this work, the Department established two grants to provide Federal emergency funds to school districts to support them in addressing the mental health needs of all students, including ELLs. School districts can use the grant funds to hire staff to provide needed services, including linguistically and culturally appropriate mental health and counseling services. The Department does not agree that amendments are necessary.

15. **Comment:** The commenter stated that ELLs must receive counseling, tutoring, and career guidance from bilingual personnel trained to provide mental health and counseling services. The commenter also stated that school districts that cannot adequately staff bilingual mental health professionals must fulfill their obligation to students and families by contracting for the positions outside of the school district. The commenter further stated the Department has not reported publicly on how much of the referenced Federal funds went directly to the hiring of bilingual mental health professionals, the teacher shortage, and addressing this need requires investment in programs that support career pathways for bilingual mental health professionals. (19)

Response: The Department agrees that ELLs must receive counseling, tutoring, and career guidance from bilingual personnel trained to provide mental health and counseling services. To support this work, the Department established two grants to provide Federal emergency funds to school districts to support them in addressing the mental health needs of all students, including ELLs. School districts can use the grant funds to hire staff to provide needed services. The funding allocations for each school district is available through an online [table](#).

16. **Comment:** The commenters requested that the Department amend N.J.A.C. 6A:15-1.8 to require school district's three-year plans to include ELL-focused professional

development on current educational research, including the effective implementation of language accommodations. The commenters further stated that the professional development should be required for all teachers, teacher candidates, supervisors, and administrators who perform evaluations, and all staff because ELLs are the responsibility of all staff members. **(1 through 10, 12 through 16, and 19)**

Response: The Department declines to make the requested changes because they are outside the scope of the rulemaking, which does not include proposed amendments at N.J.A.C. 6A:15-1.8.

17. **Comment:** The commenters recommended an amendment at N.J.A.C. 6A:15-1.11 to clearly articulate and communicate a pathway to graduation for ELLs. The commenters stated that a pathway to graduation for ELLs must include the correct translation and awarding of credits from non-U.S. transcripts; the opportunity for an ELL to earn credits through an individualized learning opportunity (see N.J.A.C. 6A:8-5.1(a)2); the appropriate placement of an ELL in requisite classes; and communication to students, parents, and guardians regarding a school district's attendance and credit recovery policies. **(1 through 10, 12 through 16, and 19)**

Response: The Department declines to make the requested changes because N.J.A.C. 6A:15-1.11 is outside the scope of the rulemaking. The Department previously issued [Guidance for Enrollment of Newcomers Aligning Credentials Across Academic Borders](#) to assist school districts and families to help schools translate foreign transcripts that will most accurately identify and understand an ELL's prior academic background and experiences.

18. **Comment:** The commenter stated that implementation across school districts is inconsistent, despite the Department's guidance for newcomers. The commenter requested that the Department amend N.J.A.C. 6A:15-1.11 to include clear, legally binding requirements for school districts to translate non-U.S. transcripts and take other measures to provide robust resources and supports to assist schools in implementing the requirements. **(19)**

Response: The Department declines to propose the requested changes because N.J.A.C. 6A:15-1.11 is outside the scope of the rulemaking.

19. **Comment:** The commenters requested that the Department amend N.J.A.C. 6A:15-1.13 to provide information and communications from the Department and school districts in a language that is understood by parents and caregivers who are limited English proficient (LEP), as well as in an accessible format. **(1 through 16 and 19)**

Response: The Department declines to make the suggested changes because N.J.A.C. 6A:15-1.13 is outside the scope of the rulemaking. Whenever possible, the Department posts on its website written guidance in multiple languages. Additionally, the Department works with each school district to ensure that it is providing resources and access to parents, including translation and interpreter services when needed. The Department also is committed to exploring how to implement a State-level process to issue communications in multiple languages and formats that are accessible to families.

20. **Comment:** The commenter stated that, although N.J.A.C. 6A:15-1.13(b) mandates the provision of translated progress reports to the parents of ELLs, the rule does not require translations for parents whose children are not in a language assistance program. The commenter stated that providing translations is critical because progress reports are not just related to language assistance programs. The commenter also stated that providing translated report cards to the parents of ELLs will ensure that the parents have information about their children's progress so that they can address problems and help

their children succeed. The commenter further stated that it also needs to apply equally to parents whose primary language is not English even if their children are fluent in English. The commenter also stated that Chapter 15 already mandates translated report cards for some parents and is an appropriate place to extend this important accommodation to all parents who need it. **(12)**

Response: The Department agrees that it is best practice for progress reports to be translated for parents whose children are not in a language instruction educational program. However, it is outside of the chapter's scope, since N.J.A.C. 6A:15 is specifically about ELLs and their families.

- 21. Comment:** The commenter recommended maintaining and strengthening the requirements at N.J.A.C. 6A:15-1.15(a) and (b). N.J.A.C. 6A:15-1.15(a) requires each district board of education to provide for the maximum practicable involvement of parent(s) of 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. N.J.A.C. 6A:15-1.15(b) requires each district board of education implementing a bilingual education program to establish a parent advisory committee on bilingual education with most members being parents of ELLs. The commenter stated that parent advisory committees are a critical way to help school districts implement more effective language assistance and related services and to reach and engage parents whose children receive the services.

The commenter requested that the Department add language governing the functioning of the parent advisory committees, including mandating at least four committee meetings each year and ensuring representation of parents who speak the major languages in the school district. The commenter also suggested that each school district's plan must address how the school district will recruit, train, engage, and support parents on the parent advisory committee. The commenter further stated that the Department must monitor and enforce implementation of the suggested requirement. The commenter also urged the Department to issue a request for proposals and fund a technical assistance project to assist school districts in the development and maintenance of their parent advisory committees related to bilingual education and to provide education and support to its parent members to help them be more effective. **(12)**

Response: The Department declines to make the requested changes at N.J.A.C. 6A:15-1.15, which is outside the scope of the rulemaking. The issuance of a request for proposals also falls outside of the rulemaking. While the Department acknowledges that a parent advisory committee plays a critical role in the development and support of ELLs, the Department does not support mandating a minimum number of meetings or a specific number of members. The Department maintains that it is appropriate for each school district to determine the scope of its parent advisory committee based on the unique needs of ELLs in the community and their families.

- 22. Comment:** The commenters requested the Department update language throughout Department documents that are used to determine whether an ELL is eligible to enter or exit bilingual education, including Title 6A of the New Jersey Administrative Code, to ensure the language aligns with current educational research and asset-based perspectives. **(1 through 16 and 19)**

Response: The comment is outside the scope of the rulemaking, which concerns only three sections at N.J.A.C. 6A:15. The Department will consider amendments to the entire chapter in preparation for its scheduled expiration date in 2023. If any amendments are made as part of the chapter's readoption, the Department will also consider training related to the updates for staff in all academic offices.

23. **Comment:** The commenter stated that training should be required for all Department staff in all academic offices so staff can understand the important rationale behind the language changes to ensure the language aligns with current educational research and asset-based perspectives. The commenter also stated that there is an urgent need for the language changes. The commenter expressed appreciation for the Department's recognition of this importance and looks forward to the Department's proposed amendments ahead of the chapter's 2023 scheduled expiration. **(19)**
Response: The comment is outside the scope of the rulemaking, which concerns only three sections at N.J.A.C. 6A:15. The Department will consider amendments to the entire chapter in preparation for its scheduled expiration in 2023.
24. **Comment:** The commenter stated that, in alignment with Federal law and guidance, the Department and school districts must ensure meaningful communication with parents in a language they can understand. The commenter also stated that information about programs, services, and activities that must be provided in parents' native languages includes information regarding language assistance programs, special education and related services, IEP meetings, grievance procedures, notices of nondiscrimination, student discipline policies and procedures, registration and enrollment, report cards, requests for parent permission for student participation in school district or school activities, parent-teacher conferences, parent handbooks, gifted and talented programs, magnet and charter schools, and any other school and program choice options. The commenter further stated that, during health emergencies, schools must provide information on school opening/closing and health and safety protocols and procedures in an accessible manner. The commenter also stated that the Department should provide Statewide translation and interpretation services.
The commenter stated that the Department's commitment to ensuring that school districts and families are provided with information and communications in multiple languages and an accessible form is not being realized across the State. The commenter also stated that there is an urgent issue of lack of compliance with Federal law and guidance, as well as existing State requirements. The commenter further stated that many school districts, especially smaller school districts with fewer numbers of ELLs, are not paying for interpretation or translation services except for, in some cases, special education testing. The commenter also stated that the Department has not translated the 2019 version of its Parental Rights in Special Education handbook into any other language. **(19)**
Response: The Department declines to make the suggested changes because they are outside the scope of the rulemaking. Whenever possible, the Department posts on its website written guidance in multiple languages. Additionally, the Department works with each school district to ensure that it is providing resources and access to parents, including translation and interpreter services when needed. The Department also is committed to exploring how to implement a State-level process to issue communications in multiple languages and formats that are accessible to families.
25. **Comment:** The commenter requested that the Department adopt amendments at N.J.A.C. 6A:15 that would strengthen the rights and protections for parents whose primary language is not English, which, in turn, would strengthen the educational rights and protections for their children. As an example, the commenter suggested adding a requirement to translate special education documents such as evaluations and IEPs. The commenter stated that the Department previously has rejected this recommendation, indicating that it would be duplicative because N.J.A.C. 6A:14 already requires written notices to be provided in a language used for communication by the parent. The commenter also stated that an explicit requirement to translate evaluations and IEPs

would be a crucial step in ensuring compliance with State and Federal mandates that parents whose primary language is not English be fully informed in their native language of all information relevant to activities for which their consent is sought. The commenter further stated that the protections now are often ignored. **(12)**

Response: The Department declines to propose the suggested changes because they are outside the scope of the rulemaking. Furthermore, N.J.A.C. 6A:14 governs special education and related services.

- 26. Comment:** The commenter stated that the voices of practicing educators are vital in reviewing and revising regulatory language that directly impacts their classrooms. The commenter implored the Department to work directly with New Jersey Teachers of English to Speakers of Other Languages and New Jersey Bilingual Educators (NJTESOL-NJBE), the Consortium for Immigrant Children, and the Education Law Center. The commenter also stated this will allow the Department to better understand the chasms between policy and reality and to create policies that will best protect and support ELLs and their families throughout the State. **(11)**

Response: The Department agrees that collaboration should occur with stakeholders who represent the rights of ELLs and immigrant children. A representative from NJTESOL-NJBE is a member of the State Bilingual Advisory Committee. Moving forward, the Department also will include the Consortium for Immigrant Children and the Education Law Center on the committee.

- 27. Comment:** The commenters requested that the Department amend N.J.A.C. 6A:15 or 6A:14, Special Education, to facilitate the effective delivery of special education, related services, and accommodations for ELLs with disabilities. **(1 through 10, 12 through 16, and 19)**

Response: The Department agrees with the commenter that ELLs with disabilities must receive special education and related services, including accommodations, as appropriate, through the development of an individualized education program (IEP). N.J.A.C. 6A:14 details the requirements for developing an IEP, including considering the language needs of ELLs as related to the plan's development. Therefore, the Department does not agree that changes to N.J.A.C. 6A:15 are necessary.

- 28. Comment:** The commenters stated that, to effectuate an ELL with a disability's right to a free, appropriate public education, the inclusion of a certified ESL/bilingual teacher should be required as part of the student's IEP team, as well as in all meetings for ELLs with IEPs. The commenters also stated that an ELL's IEP must include a plan to address the student's English language instructional needs through consultation with a specialist in second language acquisition, such as a bilingual/ESL certified teacher. **(12 and 19)**

Response: The Department agrees that it is critical to include certified bilingual/ESL staff in IEP meetings but declines to make the recommended change because it is outside the scope of the rulemaking, which concerns only three sections at N.J.A.C. 6A:15. Furthermore, N.J.A.C. 6A:14 details the requirements for developing an IEP, including considering the language needs of ELLs as related to the plan development.

- 29. Comment:** The commenter stated that the Department has not responded to the recommendation of inclusion of a certified ESL/bilingual teacher as part of the IEP team, which previously was suggested by the commenter prior to the State Board's consideration of the rulemaking at proposal level. The commenter also stated that, across school districts in New Jersey, ELLs with disabilities are negatively affected by widespread misconceptions and inappropriate practices, including the misconception that educators should delay the evaluation of ELLs for eligibility for special education.

The commenter further stated that such violations of the law and best practices must be addressed immediately. The commenter also stated that requiring a certified ESL/bilingual teacher to be included on the IEP team is an important step to ameliorate these problems. (19)

Response: The Department agrees that it is important to include certified bilingual/ESL staff in IEP meetings but declines to make the recommended change because it is outside the scope of the rulemaking, which concerns only three sections at N.J.A.C. 6A:15. Furthermore, N.J.A.C. 6A:14 details the requirements for developing an IEP, including considering the language needs of ELLs as related to the plan development. The Department is in the process of developing online modules that will address appropriately identifying ELLs who may have a disability, which should increase educators' ability to determine if a student who is an ELL has a disability. The online modules will be accessible to all school district staff.

30. **Comment:** The commenters requested that the Department amend N.J.A.C. 6A:15 to create clear pathways for ELLs to achieve the State Seal of Biliteracy. The commenters also stated that in clarifying the pathways, the Department will celebrate, affirm, and offer academic recognition for ELLs' full linguistic repertoire. (1 through 10, 12 through 16, and 19)

Response: The Department declines to make the requested changes because the comment is outside the scope of the rulemaking. N.J.A.C. 6A:8-5.3 establishes the rules for the State Seal of Biliteracy. The Department also communicates to school districts and the public through the [State Seal of Biliteracy webpage](#). ELLs can demonstrate English proficiency for purposes of obtaining the State Seal of Biliteracy by achieving the required score on the ACCESS for ELLs.

31. **Comment:** The commenter stated the Department did not respond prior to the State Board's consideration of the rulemaking at proposal level to the recommendation to amend N.J.A.C. 6A:15 to create clear pathways for ELLs to achieve the State Seal of Biliteracy. The commenter also presumed the Department agreed with the recommendation and urged the Department to take immediate action to implement it. (19)

Response: The Department declines to make the requested change because it is outside the scope of the rulemaking. N.J.A.C. 6A:8-5.3 establishes the rules for the State Seal of Biliteracy. The Department also communicates to school districts and the public through the [State Seal of Biliteracy webpage](#). ELLs can demonstrate English proficiency for purposes of obtaining the State Seal of Biliteracy by achieving the required score on the ACCESS for ELLs.

32. **Comment:** The commenters requested that the Department amend N.J.A.C. 6A:15 to allocate funds for career pathways and recruitment of bilingual and/or Black, Indigenous, and people of color (BIPOC) educators, mental health professionals, counselors, and administrators who are underrepresented in the State's educational system. The commenters stated that the Department must invest in the recruitment and training of diverse education professionals who reflect the racial, ethnic, and linguistic demographics of New Jersey's student population. (1 through 10, 12 through 16, and 19)

Response: The Department declines to make the requested changes because the comment is outside the scope of the rulemaking and of N.J.A.C. 6A:15. Furthermore, funds cannot be allocated through N.J.A.C. 6A:15 for any purpose. As part of the Department's commitment to investing in the recruitment and retention of diverse educators and administrators, it developed the resource document "[THREAD: An Approach for Recruitment & Retention of Bilingual Professionals](#)," and hosted

professional learning opportunities related to the recruitment and retention of bilingual professionals.

- 33. Comment:** The commenter stated that, in the midst of a teacher shortage, the Department must act with urgency to invest in recruitment and retention beyond guidance and professional development. The commenter also stated that the Department must articulate and invest in infrastructures that support the development of career pathways and “grow your own” programs that specifically focus on the recruitment of bilingual and BIPOC educators, mental health professionals, counselors, and administrators. The commenter further stated that this is an urgent need that cannot wait until 2023 to be addressed and that must include the elimination of barriers to certification of ESL/bilingual educators, such as edTPA. The commenter also stated that the edTPA is unreliable, redundant, and unnecessary. **(19)**

Response: The recruitment and training of educators is outside the scope of the rulemaking and of N.J.A.C. 6A:15. Likewise, the requirements for certification of educators are set forth at N.J.A.C. 6A:9, 9A, and 9B.

- 34. Comment:** The commenter expressed a commitment to the creation of equitable educational spaces that promote multilingualism, encourage the use of students’ and families’ full linguistic repertoires, and honor and respect multilingual learners’ and their families’ cultural and linguistic backgrounds, experiences, and knowledge. **(19)**

Response: The Department agrees and also is committed to creating equitable educational spaces that promote multilingualism, encourage the use of students’ and families’ full linguistic repertoires, and honor and respect multilingual learners’ and their families’ cultural and linguistic backgrounds, experiences, and knowledge.

- 35. Comment:** The commenter stated that children who are brought to the United States by their parents outside of the established immigration process should not be entitled to an education at taxpayers’ expense. The commenter also contended that a judge’s decision from many years ago when immigration was not a problem is used as a cornerstone for a massive giveaway program. The commenter stated that the Department needs to reexamine this situation, which, the commenter claimed, hurts children born in the United States. **(18)**

Response: The Department disagrees that children who are brought to the United States should not be entitled to an education because all children are entitled to a free and appropriate education regardless of citizenship status. Additionally, school districts are required by Federal law to provide language programs.



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

Adoption Level
June 1, 2022

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ANGELICA ALLEN-McMILLAN, Ed.D.
Acting Commissioner

To: Members, State Board of Education

From: Angelica Allen-McMillan, Ed.D., Acting Commissioner

Subject: N.J.A.C. 6A:15, Bilingual Education

Reason for Action: Amendments

Authority: The Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015 (P.L. 114-95)

Sunset Date: February 12, 2023

Summary

The Department of Education (Department) proposes to amend N.J.A.C. 6A:15, Bilingual Education, for consistency with the Federal Elementary and Secondary Education Act (ESEA), as reauthorized by the Every Student Succeeds Act (ESSA), and with [New Jersey's State ESSA Plan](#).

The Department proposes amendments to align the chapter with Federal requirements under the ESEA, as reauthorized by the ESSA. The proposed amendments will codify the ESSA requirement to standardize the use of multiple criteria to identify English language learners (ELLs) and the use of Statewide entry and exit criteria used by all local education agencies (LEAs) in New Jersey for language instruction educational programs for ELLs. The proposed amendments also will align the requirements for State assessment of growth in English proficiency with the ESSA.

The Department solicited input regarding the ESSA State Plan through stakeholder meetings conducted across the State and an email address that continues to receive comments from educators, parents, and community members regarding implementation. The State Advisory Committee on Bilingual Education and the ESSA-required Committee of Practitioners meet regularly and provide input regarding policies and activities related to the implementation of the ESSA and the development of the proposed amendments.

The proposed rulemaking advances the Department's vision to increase educational equity for all students by aligning State regulations with the ESSA, which was enacted to ensure equitable educational programs and services for all students. Proposed amendments to this chapter will ensure the provision of bilingual and English as a second language (ESL) services in a consistent manner to students throughout the State.

The following is a summary of the proposed amendments. Unless otherwise noted, proposed amendments are to update New Jersey Administrative Code cross-references or for grammatical or stylistic improvement.

Subchapter 1. General Provisions

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

This section sets forth the terms and definitions used throughout the chapter.

The Department proposes a term and definition for “alternate English language proficiency assessment” to mean a Department-approved assessment for students with the most significant cognitive disabilities that assesses a student’s English language proficiency on the four domains of listening, speaking, reading, and writing and that is aligned with the State’s academic achievement standards, as permitted under the ESSA and the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400 et seq.).

The Department proposes to amend the term and definition for “English language proficiency test,” which means a test that measures English language skills in the areas of aural comprehension, speaking, reading, and writing. The Department proposes to change the term to “English language proficiency assessment” and proposes to change the definition to “a Department-approved assessment that assesses a student’s English language proficiency on the four domains of listening, speaking, reading, and writing and that is aligned with the State’s academic achievement standards as permitted under the ESSA.” The Department proposes to replace “English language proficiency test” or “ELP test” with “English language proficiency assessment” or “ELP assessment,” respectively, throughout the chapter as necessary.

The Department proposes to amend the definition of “native language,” which 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. The Department proposes to change the definition to “the language or mode of communication normally used by a person with a limited ability to speak or understand the English language. In the case of a student, the native language is the language normally used by the student’s parents. Except that in all direct contact with a student, including during the evaluation of the child, the native language is the language normally used by the student in the home or in the learning environment.” The proposed amendment will align the definition with N.J.A.C. 6A:14, Special Education.

N.J.A.C. 6A:15-1.3 Identification of eligible English language learners

This section delineates the steps school districts must take to identify ELLs.

The Department proposes an amendment at N.J.A.C. 6A:15-1.3(a), which requires a district board of education to determine at the time of enrollment the native language of each ELL. The Department proposes to require a district board of education to “use a multi-step process” to determine each ELL’s native language. The proposed amendment will ensure consistency with the requirements at ESSA Section 3113(b)(2).

The Department proposes an amendment at N.J.A.C. 6A:15-1.3(a)2, which requires school districts to develop a screening process initiated by a home-language survey to determine which students in kindergarten to grade 12 whose native language is other than English must be tested for English language proficiency. The existing rule also requires the screening to be conducted by a bilingual/ESL or other certified teacher and to be designed to distinguish students

who are proficient English speakers and need no further testing. The Department proposes to replace “[d]evelop a screening process, initiated by a home-language survey” with “[a]dminister the Statewide home-language survey” to require school districts to administer the uniform, State-developed home-language survey to screen all students upon enrollment in a school district. The Department also proposes to replace “[t]he screening shall be conducted” with “[t]he Statewide home-language survey shall be administered” for the same reason. The proposed amendments will ensure consistency with the requirements at ESSA Section 3113(b)(2).

N.J.A.C. 6A:15-1.10 Bilingual, English as a second language, and English language services program enrollment, assessment, exit, and reentry

This section sets forth the process for making decisions about student entry into, and exit from, bilingual, ESL, and English language services (ELS) programs.

The Department proposes amendments at N.J.A.C. 6A:15-1.10(b), which requires students enrolled in the bilingual, ESL, or ELS program to be assessed annually using a Department-approved English language proficiency (ELP) test to determine their progress in achieving English language proficiency goals and readiness for exiting the program. The Department proposes to also require students who meet the criteria for Statewide alternate assessments to be assessed annually using an alternate ELP assessment. The proposed amendment will ensure consistency with requirements at ESSA Section 3113(b)(2).

The Department proposes amendments at N.J.A.C. 6A:15-1.10(c), which requires ELLs enrolled in the bilingual, ESL, or ELS program to be placed in a monolingual English program when they have demonstrated readiness to function successfully in an English-only program. The existing rule also requires the process to determine the readiness or inability of the individual student to function successfully in the English-only program to be initiated by the student’s level of English proficiency, as measured by a Department-established standard on an English language proficiency test. In addition, the existing rule requires the readiness of the student to be further assessed through a Department-established English Language Observation Form on the basis of multiple indicators that must 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. The Department proposes to replace “to function successfully in an English-only program” with “to exit a bilingual, ESL, or ELS program through Department-established criteria on an ELP assessment and a Department-established English language observation form.” The Department also proposes to replace “[t]he 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” with “[a] student shall first achieve the Department-established English proficiency standard as measured by an ELP assessment.” The Department further proposes to replace “[t]he readiness of the student shall be further assessed on the basis of multiple indicators that shall include” with “[t]he student’s readiness shall be further assessed by the use of a Department-established English language observation form that considers.” The proposed amendments will require school districts to adhere to a Statewide standard and protocol established by the Department to identify students eligible for entry into, and exit from, a language service program. The proposed amendments will ensure consistency with the requirements at ESSA Section 3113(b)(2).

The Department proposes new N.J.A.C. 6A:15-1.10(c)1 to state that an ELL with a disability whose disability makes it impossible for the student to be assessed in a particular domain because there are no appropriate accommodations for assessing the student in that

domain may be exited from ELL status based on the student's score on the remaining domains in which the student was assessed. The proposed paragraph will align with the requirements at ESSA and its implementing regulations.

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

Social Impact

The rules proposed for amendment apply to the provision of programs and services that ensure ELLs have the English language proficiency to access the academic content necessary to meet the New Jersey Student Learning Standards (NJSLS) and to be prepared for both postsecondary education and the demands of the 21st century workplace. The rules proposed for amendment set forth the responsibilities of district boards of education to ensure policies and procedures are in place to guarantee ELLs receive a thorough and efficient education. The proposed amendments will have no additional social impact as they are designed to update the rules and processes concerning the delivery of programs and services to ELLs.

Economic Impact

The Department does not anticipate that the proposed amendments will involve increased expenditures for school districts and other providers since all publicly funded education programs in New Jersey currently are required to provide language assistance programs for enrolled ELLs and to provide a thorough and efficient education to all students.

Federal Standards Statement

The proposed amendments are in compliance with, and do not exceed, Federal education requirements included in the ESSA and the IDEA, and its implementing regulations, and will continue to advance the mission to ensure the provision of programs and services for ELLs. There are no other Federal requirements that impact the proposed amendments; therefore, a Federal standards analysis is not required.

Jobs Impact

The Department does not anticipate the proposed amendments will result in the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed amendments apply to all providers of publicly funded elementary, secondary, and adult high school education programs, including approved private schools for students with disabilities (APSSDs). The proposed amendments are largely procedural and programmatic, based on the enactment of ESSA and State law, and must be in place for all affected students. It would be disadvantageous to students and the general public if all providers did not follow the requirements. The proposed amendments clarify current reporting requirements, but do not pose any additional requirements on APSSDs.

Housing Affordability Impact Analysis

The proposed amendments will not have an impact on the affordability of housing in New Jersey. There is an extreme unlikelihood the proposed amendments will evoke a change in the average costs associated with housing because the proposed rules for reoption with amendments concern the provision of language assistance programs for ELLs.

Smart Growth Development Impact Analysis

There is an extreme unlikelihood the proposed amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments concern the provision of language assistance programs for ELLs.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

There is an extreme unlikelihood the proposed amendments would have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the proposed amendments concern the provision of language assistance programs for ELLs.

Full text of the proposed amendments follows (addition indicated 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:15-1.2 Definitions

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

“Alternate English language proficiency assessment” (alternate ELP assessment) means a Department-approved assessment for students with the most significant cognitive disabilities that assesses a student’s English language proficiency on the four domains of listening, speaking, reading, and writing, and that is aligned with the State’s academic achievement standards, as permitted under the Every Student Succeeds Act (ESSA) and the Individuals with Disabilities Education Act (IDEA).

“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 ELLs enrolled in the program and also in English; in the aural comprehension, speaking, reading, and writing of the native language of 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 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 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.

"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 ELLs and for native English speaking students enrolled in the program.

“Educational needs” means the particular educational requirements of 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 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 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. 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] **assessment**” (**ELP assessment**) means a [test that measures] **Department-approved assessment that evaluates a student’s** English language [skills in] **proficiency on** the [areas] **four domains** of [aural comprehension] **listening**, speaking, reading, and writing, **and that is aligned with the State’s academic achievement standards as permitted under the ESSA.**

“English language services” means services designed to improve the English language skills of ELLs. The services, provided in school districts with less than 10 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.

“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] **or mode of communication normally used by a person with a limited ability to speak or understand the English language. In the case of a student, the native language is the language normally used by the student’s parents, except that in all direct contact with a student, including during the evaluation of the child, the native language is the language normally used by the student in the home or in the learning environment.**

“NJSLS” means the New Jersey Student Learning Standards as defined in N.J.A.C. 6A:8-1.3.

“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” means the process established by the district board of education to assess ELLs for exit from bilingual, ESL, or English language services programs.

“Sheltered English instruction” means an instructional approach used to make academic instruction in English understandable to ELLs. Sheltered English classes are taught by regular

classroom teachers who have received training on strategies to make subject-area content comprehensible for ELLs.

6A:15-1.3 Identification of eligible English language learners

- (a) The district board of education shall [determine] **use a multi-step process** at the time of enrollment **to determine** the native language of each 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] **Administer the Statewide** home-language survey[,] to determine which students in kindergarten to 12th grade[, of those] whose native language is other than English[,] must be [tested] **screened further** to determine English language proficiency. The [screening] **Statewide home-language survey** shall be [conducted] **administered** 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 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 ELLs. The district board of education shall also use age-

appropriate methodologies to identify preschool ELLs to determine their individual language development needs.

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

- (a) All 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] **ELP assessments** to determine their progress in achieving English language proficiency goals and readiness for exiting the program. **Students who meet the criteria for Statewide alternate assessments, pursuant to N.J.A.C. 6A:14-4.10(a)2, shall be assessed annually using an alternate ELP assessment.**
- (c) 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] **exit a bilingual, ESL, or ELS program through Department-established criteria on an ELP assessment and a Department-established English language observation form.** A student [to function successfully in the English-only program] shall [be initiated by the student's level of English proficiency as measured by a] **first achieve the Department-established English proficiency standard [on an English language proficiency test] as measured by an ELP assessment.** The **student's** readiness [of the student] shall be further assessed [on] **by the [basis] use of [multiple indicators] a Department-established English language observation form** that [shall include]

considers, 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.

- i. Pursuant to 34 C.F.R. § 200.6 (h)(4)(ii), an ELL with a disability whose disability makes it impossible for the student to be assessed in a particular domain because there are no appropriate accommodations for assessing the student in that domain may be exited from ELL status based on the student's score on the remaining domains in which the student was assessed.**
- (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.