

Notice of Proposal for N.J.A.C. 6A:15, Bilingual Education

The following is the accessible version of the notice of proposal related to the proposed amendments at N.J.A.C. 6A:15. The notice includes two sections – [summary](#) and [text of the proposed amendments](#).

Education

State Board of Education

Bilingual Education

Definitions

Identification of Eligible English Language Learners

Bilingual, English as a Second Language, and English Language Services Program

Enrollment, Assessment, Exit, and Reentry

Proposed Amendments: N.J.A.C. 6A:15-1.2, 1.3, and 1.10

Authorized By: New Jersey State Board of Education, Angelica Allen-McMillan, Ed.D., Acting Commissioner, Department of Education and Acting Secretary, New Jersey State Board of Education.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2022-007.

Submit written comments by March 19, 2022, to:

Kathleen Ehling, Assistant Commissioner

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The agency proposal follows:

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 rules 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 pursuant to 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 proposed amendments 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 proposed amendments 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 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 proposal follows (addition indicated in boldface **thus**; deletions indicated in brackets [thus]):

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).

...

“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.

...

“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.

...

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. (No change.)
 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) (No change.)
- (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 CFR 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) – (f) (No change.)