

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 second discussion 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 October 6, 2021, meeting of the State Board of Education when the rulemaking was considered at First Discussion Level.

Topic: Bilingual Education **Meeting Date:** November 3, 2021
Code Citation: N.J.A.C. 6A:15 **Level:** Second Discussion
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 State Board of Education members and the public and the Department of Education's (Department) responses. Each commenter is identified at the end of the comment by a letter or number that corresponds to the following list:

A. Mary Beth Berry, Member, State Board of Education

1. **Comment:** The commenter asked whether the Department has identified any staffing concerns regarding the provision of bilingual education or related services. **(A)**

Response: The Department recognizes that in high-need areas such as Bilingual education, districts may be experiencing difficulty in hiring and retaining qualified teachers. The Department continues to provide strategies and supports to school districts in the recruiting and retaining of qualified teachers in all areas.



State of New Jersey
DEPARTMENT OF EDUCATION
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Second Discussion
November 3, 2021

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 the 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 in 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 in 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 in 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 in 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 in 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.

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 readoption 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

Table of Contents

[Subchapter 1. General Provisions](#)

[6A:15-1.2 Definitions](#)

[6A:15-1.3 Identification of eligible English language learners](#)

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

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.