

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

The following is the accessible version of the proposed readoption with amendments at N.J.A.C. 6A:15. The second discussion document includes three sections – [comment and response form](#), [summary](#) and [rules proposed for readoption and proposed amendments](#).

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

This comment and response form contains comments from the November 9, 2022, meeting of the State Board of Education when the rulemaking was considered at First Discussion.

Topic: Bilingual Education

Meeting Date: December 7, 2022

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 the State Board of Education 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. Kathy Goldenberg, President, State Board of Education
- B. Andrew Mulvihill, Vice President State Board of Education
- C. Jack Fornaro, Member State Board of Education
- D. Mary Beth Berry, Member State Board of Education
- E. Elaine Bobrove, Member State Board of Education
- 1. Jean Public

- 1. Comment:** The commenter asked what are the four language domains for multilingual learners (MLs). **(A)**

Response: The four language domains are listening, speaking, reading, and writing.

- 2. Comment:** The commenter asked if educators in ML programs are teaching in all languages of the students and if they provide instruction in that class to students who speak different languages. **(A)**

Response: School districts must provide full-time bilingual education programs when it has 20 or more MLs with the same language. The instruction in bilingual education programs must be in the students' primary language and in English. The instruction also is taught by a teacher who speaks the primary language of the MLs in the classroom. Therefore, the teacher of a bilingual education program is expected to be fluent in the primary language of the students and in English.

- 3. Comment:** The commenter asked if the ages of MLs are the same as other students in public schools. **(C)**

Response: School districts must enroll all students, including MLs, who are between the ages of five and 20 and are domiciled in the school district or otherwise entitled to attend

pursuant to N.J.S.A. 18A:38.1 and N.J.A.C. 6A:22-3.2. The Department requires school districts to assess MLs and place them in an age-appropriate grade when they enter school.

4. **Comment:** The commenter asked if an adult ML could be placed in the same class as a younger ML, for example, whether a school district would place in the same class a high school student who is a ML with an elementary student who also is a ML. (C)

Response: In accordance with the U.S. Department of Education guidance, it would be inappropriate for a school district to place high school-aged students with interrupted formal education (SIFEs) in an elementary or middle school programs because it would not permit SIFEs to meet high school grade-level standards and graduation requirements within a reasonable amount of time. The placements also would not be age appropriate. The proposed definition of “bilingual education program” at N.J.A.C. 6A:15-1.2 does not specify if there are multiple grade levels in a bilingual class. School districts can make this determination. If, for example, the range of grade levels vary so much that instruction would not be practical, then the school district may request to waive the requirement for a bilingual education program through the process set forth at N.J.A.C. 6A:15-1.15.

5. **Comment:** The commenter asked if the proposed new definitions at N.J.A.C. 6A:15-1.2 include the term “comprehensive equity plan” and if it is defined anywhere. The commenter also asked if there will be an opportunity to review the new definitions. (D)

Response: The Department proposes at N.J.A.C. 6A:15-1.2 new definitions for “comprehensive equity plan,” “educational activities and programs,” “educational equity,” “equal educational opportunity,” and “multicultural curriculum” to mean as the terms are defined at N.J.A.C. 6A:7, Managing for Equality and Equity in Education. The Department expects to present the readoption of N.J.A.C. 6A:7 to the State Board soon as the chapter is scheduled to sunset in March 2023.

6. **Comment:** The commenter asked if students with disabilities are incorporated in ML programs. (C)

Response: Yes. New Jersey’s ML population is diverse. State requirements for students with disabilities are outlined in N.J.A.C. 6A:14. MLs who have an individualized education program (IEP) must be provided both special education and ML services at the time the need for services are identified, depending on each student’s individual needs.

7. **Comment:** The commenter stated that there are also gifted MLs. (A)

Response: As is true with all student groups, the ML population has a large range of learning assets and needs beyond the acquisition of the English language.

8. **Comment:** The commenter asked if the needs of a ML with a disability would be served through the child study team. (D)

Response: This depends on each school district. Some school districts may use their intervention and referral services (I&RS) to help determine if it is an English language acquisition matter or a learning disability. Interventions will be provided first through a tiered system. If these interventions are unsuccessful, the ML may receive more intensive interventions and may ultimately be referred to the child study team, which will evaluate the student in the student’s primary language to determine if the students has a disability.

9. **Comment:** The commenter asked what services a newcomer program, as set forth at N.J.A.C. 6A:15-1.4(g), provides for a student who does not speak English and has not been in school, has not received any academic training, and may not need an IEP. **(D)**

Response: The Department proposes at N.J.A.C. 6A:15-1.4(g) to establish rules for a newcomer program. A school district would establish a newcomer program for a limited time to provide an ML who is new to the United States with social emotional learning supports to enable the ML to become accustomed to a new school culture. Newcomer programs also help to bridge any of the ML’s educational needs related to the New Jersey Student Learning Standards (NJSLS) before being immediately placed in general education classes. The Department also recognizes that all teachers must have strategies to work with newcomer students, including SIFEs. Therefore, the Department proposes amendments at N.J.A.C. 6A:15-1.7(a) to ensure that district boards develop professional development plans for bilingual, ESL, and academic content teachers whose classroom instruction is in English; administrators who supervise bilingual/ESL programs; and administrators and any personnel who observe and evaluate teachers of MLs.

10. **Comment:** The commenter asked about a newcomer student who may be taking algebra and how this student is being supported to receive the prerequisites in school. **(D)**

Response: A newcomer student who may need additional support to bridge their lived experiences to the academic learning environment may receive these supports directly through specialized programs, such as a newcomer program or the N.J. Tiered Systems of Supports and, indirectly, by professional development for teachers and administrators on topics such as social emotional teaching and learning, second language acquisition, and adaptational teaching strategies (e.g., sheltered English instruction).

11. **Comment:** The commenter asked for an explanation of the term “SIFE.” **(A)**

Response: As proposed at N.J.A.C. 6A:15-1.2, SIFE is a student with interrupted formal education and refers to a ML in grades four to 12 who has experienced disruptions in their formal education that took place outside of the United States. Often, SIFEs arrive from countries with different compulsory grade levels, have experienced significant civil unrest, or are refugees who experienced extensive breaks from formal schooling as traditionally offered in the United States.

12. **Comment:** The commenter stated that SIFEs have not been exposed to academics and may need some different instructional techniques. **(D)**

Response: The Department agrees and is proposing at N.J.A.C. 6A:15-1.7(b)1 that each school district’s professional development includes instructional adaptational strategies and training for bilingual, ESL, academic content teachers whose classroom instruction is in English, administrators who supervise bilingual/ESL programs, and administrators and any personnel who observe and evaluate teachers of MLs.

13. **Comment:** The commenter asked if it would be possible for MLs to graduate high school in New Jersey without speaking English. The commenter questioned whether a student could graduate high school through the portfolio process in a language other than English. **(B)**

Response: MLs cannot exit a language instruction educational program (LIEP) until they achieve a Department-established cut score on the ACCESS for ELLs assessment, which

measures a ML’s level of progress toward English proficiency. MLs must satisfy the graduation requirements set forth at N.J.A.C. 6A:8-5.1 for all students. However, it is possible for older students to graduate high school without meeting the Department-established cut score. MLs can participate in the portfolio appeals process. School districts can provide MLs with certain accommodations based on each student’s unique needs, which allow constructed response tasks (CRTs) within the submitted portfolio appeal to be translated into an ML’s primary language.

14. **Comment:** In relation to the proposed amendments that will include preschool students as part of the identification of MLs, the commenter asked what happens in a school district that does not have preschool. (A)

Response: The proposed amendment at N.J.A.C. 6A:15-1.3(a)3i to identify preschool MLs applies only to State-funded preschool programs that are subject to the provisions at N.J.A.C. 6A:13A, Elements of High-Quality Preschool Programs.

15. **Comment:** The commenter asked how many MLs are in New Jersey’s school districts. (A)

Response: In the [2021-2022 enrollment data collection](#), the Department reported 100,185 total MLs enrolled in kindergarten through grade 12 in the State’s public schools.

16. **Comment:** The commenter asked what happens if adult high schools provide services for MLs to assist MLs who did not finish their education in a traditional high school. The commenter stated that most community colleges have programs for MLs, but not all students may be able to afford the programs. The commenter also stressed the importance for MLs to have other resources available to attend school and receive services. (B)

Response: As set forth in the adult education rules at N.J.A.C. 6A:20-2.3(a)1, English language learners are to be referred to appropriate classes in an adult high school to attain English language proficiency. If the individual’s language improvement needs cannot be met by the adult high school, then the principal must refer the individual to a [New Jersey Department of Labor and Workforce Development Career Connections](#) site.

17. **Comment:** The commenter asked if the Department has statistics related to MLs who graduate high school and who secure employment or attend college. (C)

Response: The Department reported the following data on the postsecondary enrollment (as of the fall of 2021) for students in the class of 2021. Statewide, 67.7 percent of students were enrolled in any higher education institution, of which, 25.4 percent were enrolled in a two-year institution and 74.6 percent were enrolled in a four-year institution. In the English learners student group, enrollment in any institution equaled 30.7 percent, of which, 59.7 percent were enrolled in a two-year institution and 40.3 percent were enrolled in a four-year institution. More information about post-graduation enrollment can be found on the [Department’s website](#).

18. **Comment:** The commenter expressed concern with aspects of the proposed amendments that relate to the use of “equity” and related terms. (B)

Response: The Department acknowledges the commenter’s concerns. As set forth at N.J.A.C. 6A:15-1.1(a), the chapter’s purpose is to ensure that MLs “are provided with a free, appropriate public education pursuant to N.J.S.A. 18A:35-15 to 26.” To ensure MLs receive a quality education, the terms related to an equal educational opportunity as defined

at N.J.A.C. 6A:7 are being added to the definitions at N.J.A.C. 6A:15. This will ensure that school districts and the public understand the terms are used in the same manner across both chapters.

- 19. 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 stated that a judge's decision from many years ago is the basis for the "giveaway program." The commenter claimed that these programs hurt children born in the United States. **(1)**

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, Federal and State laws require school districts to provide language programs, so that all students, regardless of documented status, can meet or exceed the NJSLs.



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

Second Discussion
December 7, 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: Readoption with amendments

Authority: N.J.S.A. 18A:4-15 and 18A:35-15 to 26 and 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 readopt N.J.A.C. 6A:15, Bilingual Education, with amendments. The chapter is scheduled to expire on February 12, 2023.

All school districts are required to provide students who are identified as multilingual learners (MLs, or previously called English language learners) with the services they need to meet or exceed the New Jersey Student Learning Standards (NJSLs). The Department, in turn, is required to ensure that all school districts meet the chapter's requirements and provide all students with a thorough and efficient education. Therefore, this chapter describes the school district's specific obligations to support MLs. The chapter's general provisions include definitions of terms related to bilingual education, the process for identifying students who may be MLs, placement of MLs in language instruction educational programs (LIEPs), and the process for exiting a student from a LIEP and ML identification status. The chapter also includes connections to other chapters in Title 6A of the New Jersey Administrative Code, which apply to all students, including MLs. N.J.A.C. 6A:15 provides requirements for school districts to engage families, including notification of their children's identification and placement into a LIEP, as well as the opportunity to be a part of the parent advisory committee.

N.J.S.A. 18A:35-15, which was enacted in 1975, established a State requirement that bilingual education programs must be created to meet the needs of children whose primary language is other than English and to facilitate their integration into the regular public school. The Elementary and Secondary Schools Education Act (ESEA) of 1965, through its many reauthorizations, sets forth the Federal requirements for the provision of services to MLs for any state or school district that receives Federal funding under Title III of the ESEA.

The corresponding chapter, N.J.A.C. 6A:15, was first adopted as new rules, effective July 6, 1998 and has since been readopted.. The Department recognizes that the most recently adopted amendments in early 2022 were proposed for consistency with the Federal ESEA, as reauthorized by the Every Student Succeeds Act (ESSA), and with New Jersey’s State ESSA Plan. The rulemaking had been delayed due to COVID-19-related interruptions. The new proposals in the readoption with amendments will build upon the recently adopted changes and stakeholder feedback that the Department received during the comment period for the 2022 rulemaking and will maintain the chapter’s alignment with the ESEA and State laws.

The Department received input from several stakeholder groups, including the New Jersey Principals and Administrators Association. The Department also has considered changes to the chapter requested by the New Jersey Teachers of English to Speakers of Other Languages/New Jersey Bilingual Educators, the New Jersey Consortium for Immigrant Children, and the Education Law Center during the comment period for the 2022 amendments to align the chapter with the ESEA. The majority of the organizations’ comments were outside the scope of the 2022 rulemaking but related to other areas of the chapter; the Department has incorporated the requested changes where deemed appropriate. In addition, the State Advisory Committee on Bilingual Education provided input regarding policies and activities related to the implementation of bilingual education in New Jersey, some of which is incorporated in the proposed amendments.

The Department is proposing to clarify that English as a second language (ESL) services must consistently be provided in all language instruction educational programs, (LIEPs) and their alternatives. The proposed amendments will also ensure clarity in how bilingual education requirements intersect with general school district requirements related to inclusion, curriculum, equity, standards, and educator certification by connecting N.J.A.C. 6A:15 with other chapters in Title 6A of the New Jersey Administrative Code (namely N.J.A.C. 6A:7, [Managing for Equality and Equity in Education](#), N.J.A.C. 6A:8, [Standards and Assessment](#), and N.J.A.C. 6A:9B, [State Board of Examiners and Certification](#)). These connections will help school districts better understand how the services and programs they provide MLs are aligned to the systems that school districts already have in place for all students.

The Department’s emphasis on primary language as an integral role of instruction will shift from a deficit design, whereby students learn English and lose their primary language, to an asset programmatic design, where students grow their English language proficiency while continuing to master their primary language. The purpose of this chapter is to ensure programs are designed to help students thrive and to honor their multilingual skills as an asset rather than to focus on only deficit-based remediation.

The Department recognizes that MLs enter New Jersey’s schools with a level of proficiency in a world language other than English. ESL is a second language class that is intended to develop a student’s English language skills and that is designed for MLs whose first language is not English. The proposed amendments are designed to further the goal of ESL and world language instruction, which is to produce multilingual speakers. The Department further understands that MLs should be given the opportunity to further their proficiency in their primary language, English, and other languages.

The Department proposes throughout the chapter to change all uses of “English language learner” and “ELL” to “multilingual learner” and “ML,” respectively, to shift to asset-based language.

The Department also proposes to define “language instruction educational programs or LIEP” as an umbrella term that includes bilingual education programs, dual language immersion programs, and any other Department-approved language instructional program alternative. The Department proposes throughout the chapter to replace “program of instruction” and “bilingual, ESL, and English language services programs” with “LIEPs.” The proposed amendments will align the chapter with State laws that promote culture and language as integral components of learning and succeeding in New Jersey’s public schools and achieving graduation from a New Jersey public high school (N.J.S.A. 18A:35-4.36a, which concerns diversity and inclusion instruction in schools, and N.J.S.A. 18A:7C:13-1 et seq., which created the State Seal of Biliteracy).

Additionally, the Department proposes to expand the definition of who is identified as an ML to include preschool students. The U.S. Department of Education defines a student who is in need of language services as being between the ages of 3 and 21. The proposed amendments, which include replacing “kindergarten” with “preschool” throughout the chapter, where applicable, will align the chapter with the Federal definition and increase identification of students who are becoming multilingual. The Department’s proposal will create an opportunity for schools to access Federal funding to support program development and build capacity among educators including preschool teachers, principals, and other school leaders.

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

Subchapter 1. General Provisions

N.J.A.C. 6A:15-1.1 General Requirements

This section sets forth the purpose of the chapter.

The Department proposes at N.J.A.C. 6A:15-1.1(a)3, which states that part of the chapter’s purpose is to ensure the provision of bilingual education and related services, to replace “bilingual education and related services” with “culturally and linguistically responsive, researched-based, and effective language instruction educational programs (LIEPs).” The proposed amendments will provide greater detail around the expected quality of LIEPs. LIEP is the umbrella term for all programs that school districts are required to provide to MLs.

The Department proposes to amend N.J.A.C. 6A:15-1.1(a)4, which states that part of the chapter’s purpose is to assist district boards of education in providing educational services to ELLs. The Department proposes to replace “educational services to ELLs” with “bilingual education and dual language immersion programs that promote bilingualism, biliteracy, cross-cultural competency, and high levels of academic achievement in English and the student’s primary language(s).” As with the proposed amendment at N.J.A.C. 6A:15-1.1(a)3, the proposed amendment will clarify the expectations regarding the full breadth of services, including LIEPs, that school districts are expected to provide MLs.

The Department proposes new N.J.A.C. 6A:15-1.1(a)5 and (a)6 to state that part of the chapter’s purpose is to “[p]repare students with the knowledge and skills to be able to succeed in a global society” and to “[l]ead high school students, if they choose and if provided by the school district, to be on a path toward attaining the State Seal of Biliteracy in their primary language,” respectively. The Department’s goal is to ensure all New Jersey students are prepared with the knowledge and skills to be able to succeed in a global society. The Department emphasizes this expectation to show the direct parallels between this chapter and N.J.A.C. 6A:8, which describes

the instructional opportunities all students must have access to prior to graduating high school and includes the State Seal of Biliteracy. School districts are not required to implement a Seal of Biliteracy program and students are not required to enroll in it, if offered at their high school. However, the program was established in 2016 “to recognize high school graduates who have attained a high level of proficiency in speaking, reading, and writing in one or more foreign languages in addition to English” because, among many reasons, “proficiency in multiple languages is critical in enabling New Jersey to participate more effectively in the current global political, social, and economic context, and in expanding trade with other countries” (see N.J.S.A. 18A:7C-13 and 14). Accordingly, the proposed new paragraphs will clarify that programs designed to support MLs should be implemented with the same goals and principles of the optional Seal of Biliteracy program, which is to promote linguistic proficiency in multiple languages, rather than the narrow goal of promoting only English proficiency.

The Department proposes new N.J.A.C. 6A:15-1.1(a)8 to state that part of the chapter’s purpose is to ensure MLs receive equal educational opportunities, programs, and services necessary to achieve a thorough and efficient education. The Department proposes new N.J.A.C. 6A:15-1.1(a)9 to state that part of the chapter’s purpose is to ensure district boards of education are providing LIEPs that are aligned to the NJSLs, New Jersey Preschool Teaching and Learning Standards of Quality, the English Language Development (ELD) standards for kindergarten through grade 12, and the Early Language Development Standards. The proposed paragraphs align with the expectations set forth at N.J.A.C. 6A:8, which defines a thorough and efficient education as to the provision of the educational programs and services necessary to meet or exceed the NJSLs. as all programs must align.

The Department proposes to amend N.J.A.C. 6A:15-1.1(b), which states that the chapter’s rules apply to all district boards of education providing educational programs and services to ELLs. The Department proposes to delete “providing educational programs and services to ELLs” because school districts in which parents have refused placement in a LIEP for their child(ren) must still provide identified MLs with equitable educational services and activities to ensure MLs can meet or exceed the NJSLs. The proposed amendment will clarify that this chapter is applicable to all school districts that identify a student as a ML and not only school districts that provide services to a ML through placement in a LIEP.

The Department proposes to amend N.J.A.C. 6A:15-1.1(c)2, which requires the Department to provide technical assistance to each district board of education in the implementation of bilingual, ESL, and English language services programs. The Department proposes to add “culturally and linguistically responsive” before “technical assistance.” The proposed amendments will add explicit language related to cultural responsiveness and update terminology.

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

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

The Department proposes to amend the definition for “bilingual education program,” which means a full-time program of instruction in all courses or subjects that a child is required by law or rule, 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. The Department proposes to replace “that a child is required by law or rule to”

with “provided in accordance with N.J.S.A. 18A:35-18.” The Department also proposes to replace “receive, given in the native language of ELLs enrolled in the program and also in English” with “[s]tudents in a bilingual education program receive instruction in the primary language of MLs enrolled in the program and in English, while also receiving ESL instruction.” The Department further proposes to delete “in the aural comprehension” and to add “[e]ducators use the primary language of instruction to enhance literacy in the primary language and as a support in the development of listening,” before “speaking, reading, and writing.”

The Department proposes to amend the definitions for “bilingual part-time component,” “bilingual resource program,” and “bilingual tutorial program” to state that each is “an instructional program alternative” and to specifically indicate that English as a second language (ESL) is a component of each program. Pursuant to N.J.S.A. 18A:35-18, the requirement for a full-time LIEP program, which is defined in this chapter as a bilingual education or dual language immersion program, may be waived after approval by the Department. If waived, the school district may implement an instructional program alternative (that is, a bilingual part-time component, bilingual resource program, and/or bilingual tutorial program). The Department also proposes to amend each definition to specify the applicable academic content areas in each program to clarify that a ML receiving a program alternative must still receive instruction in academic content areas in the student’s primary language. Accordingly, the Department proposes to clarify that MLs in a bilingual part-time component must receive language arts and mathematics instruction in their primary language, while MLs in a bilingual resource program must receive “daily instruction from a certified bilingual teacher in academic content areas as identified by the school district.” MLs in a bilingual tutorial program receive one period of instruction in an academic content area requirement for graduation and one other required content area.

The Department proposes a new term and definition for “class period” to mean “the time allocated for instruction in academic content areas as part of the regular school schedule for each day in session as set forth at N.J.A.C. 6A:32-8.3. In a block schedule, weekly instruction is equivalent to one class period for each day of school in a given week.” The proposed definition will clarify the required services, particularly for a block schedule. For instance, the definition will help clarify the minimum number of ESL services a school district must provide to students each week.

The Department proposes several new terms and definitions as defined at N.J.A.C. 6A:7, Managing for Equality and Equity in Education, which sets forth the requirements for ensuring all students are provided equal access to educational programs and services provided by district boards of education. As N.J.A.C. 6A:15 sets forth the requirements for LIEPs and outlines the services that district boards of education must provide to MLs, the Department proposes to make clearer links between the two chapters. The Department proposes to add the terms “comprehensive equity plan,” “educational activities and programs,” “educational equity,” “equal educational opportunity,” and “multicultural curriculum” to mean as defined at N.J.A.C. 6A:7-1.3.

The Department proposes to add the term “cut score” to mean as defined at N.J.A.C. 6A:8-1.3. The proposed definition will clarify that a cut score for English language proficiency has the same meaning as applied to other assessments required at N.J.A.C. 6A:8.

The Department proposes to amend the term “dual-language bilingual education” to “dual language immersion program.” The Department also proposes to amend the definition, which 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 MLs and for native English speaking students enrolled in the program. The Department proposes to add “for the purpose of meeting the LIEP requirements at N.J.S.A.

18A:35-18 and this chapter, after “means” to clarify that the requirements apply only to dual language immersion programs that are implemented to meet LIEP requirements under this chapter. School districts may already have in place dual language immersion programs, which provide instruction in English and another language. The Department also proposes to replace “ELLs and for native English speaking students enrolled in the program” with “MLs in the program receive instruction in their primary language, as well as ESL instruction.” The Department further proposes to add “[a] dual language immersion program provides daily instruction in English and a minimum of 50 percent of instruction in the primary language of enrolled MLs. A dual language immersion program that is designed to support MLs is sometimes referred to as a two-way bilingual education program.” The proposed amendments will clarify the expectations of a dual language immersion program designed to meet LIEP requirements and underscore the importance of language development in two languages at the same time. Research demonstrates that two-way dual language immersion programs benefit all students and can be particularly beneficial for heritage speakers, who may speak a language other than English at home, and for students who are not MLs but who have a connection to the language and culture. MLs and heritage speakers in these programs view their multilingual status, and that of their classmates, as an asset rather than a deficit.

The Department proposes to add the term “Early Language Development Standards,” which means the [preschool English language development standards](#) developed by WIDA for preschool students. The standards correspond to five domains of children’s development and learning: approaches to learning, language and communication development, cognition and general knowledge, physical well-being and motor development, and social and emotional development. The standards, which will be incorporated by reference, are published by the Board of Regents of the University of Wisconsin System, on behalf of the WIDA Consortium. The Department proposes to add this definition to clarify which standards apply to preschool students.

The Department proposes to amend the definition for “English as a second language (ESL) program,” which 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.” The Department proposes to replace “developmental second-language program of at least one period of instruction” with “class period of second-language acquisition instruction within a LIEP” and “student language proficiency” with “a student’s English language proficiency,” respectively. The Department also proposes to replace “aural comprehension, speaking, reading, and writing in English using second language teaching techniques” with “the English language development standards” to align to the four language domains as defined by WIDA. The Department proposes this amendment throughout the chapter, where necessary. The Department further proposes to delete the last sentence because “class period” will be defined separately.

The Department proposes to amend the definition for “English language development standards,” which 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.” The Department proposes to amend to replace “2012” with

“2020” and to add “in listening, speaking, reading and writing” to reduce redundancy through this chapter. The Department also proposes to delete “World-Class Instructional Design and Assessment” as the title is no longer used by the organization. The Department further proposes to replace “subjects” with “content areas” and to update the webpage where the WIDA standards can be found. The Department proposes to add, “[t]he standards are a version of English language arts that have been crafted to address the specific developmental stages of students learning English.” The proposed amendments reflect an update in 2020 to the standards for English language development instruction.

The Department proposes to delete the term “English language learner” or “ELL,” which 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.” The Department proposes to replace this term with “multilingual language learner” or “ML” to shift to focus to the strengths of students who are learning multiple languages at one time (asset-based), rather than focusing only on needing to learn English (deficit-based).

The Department proposes to amend the definition for “English language services,” which 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.” The Department proposes to replace “less than 10 ELLs” with “less than 10 MLs in kindergarten to 12th grade” and “in addition to” with “part of,” respectively. The proposed amendments clarify that the student threshold for English language services does not include preschool MLs and that the services are part of the regular program and not an add-on service.

The Department proposes to amend the definition for “instructional program alternative,” which 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.” The Department proposes to replace “a part-time program of instruction” with “a LIEP, other than bilingual education and/or dual language immersion.” The Department also proposes to add “through a waiver request pursuant to N.J.S.A. 18A:35-18” after “Department.” The Department further proposes to replace “English as a second language” with “an ESL class period each day in session.” The proposed amendments will clarify which programs are allowable for a one-year period under the waiver process set forth at N.J.S.A. 18A:35-18 to meet the statutory requirements when providing full-time bilingual education is not practical.

The Department proposes a new term and definition for “language instruction educational program” or “LIEP.” The proposed term means “the program of services in which a ML receives instruction and support to develop and attain English language proficiency while meeting or exceeding the NJSLs in academic content areas. MLs in a LIEP develop proficiency in the English language while they develop skills and knowledge within the academic content areas. A LIEP includes the services that all MLs are entitled to receive, pursuant to N.J.S.A. 18A:35-16 and this chapter. LIEP includes ‘programs of bilingual education,’ as defined at N.J.S.A. 18A:35-16, and ‘instructional alternative programs,’ pursuant to N.J.S.A. 18A:35-18.” The proposed term is used by the United States Department of Education to describe the different types of language services programs for MLs.

The Department proposes a new term and definition for “multilingual learner” or “ML.” The proposed term means “a student whose primary language is not English, who is identified

through the process set forth in this chapter, and who is developing proficiency in multiple languages (e.g., English and a primary language). The term is synonymous with ‘English learner’ or ‘English language learner.’” The Department proposes to replace “English language learner” and “ELL” with “multilingual learner” or “ML” to shift to an asset-based focus on how students who are learning multiple languages are identified.

The Department proposes to delete the definition for “native language,” which means “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 deletion reflects the Department’s intent to streamline definitions and provide increased clarity to school districts about which term accurately refers to the language the ML usually speaks.

The Department proposes a new term and definition for “newcomer” to mean “any student born outside of the United States who has recently arrived in the United States. Newcomer is an umbrella term that includes a heterogeneous group of immigrants; some newcomers may also be MLs or students with interrupted formal education (SIFEs).” “Newcomer” is sometimes used synonymously with “SIFE,” but “newcomer” is an umbrella term that includes SIFEs. The Department maintains that the distinction is important because all students who are newcomers should receive services to help them transition to the United States, while SIFEs may require additional and highly specialized services.

The Department proposes to amend the definition for “parents,” which means “the natural parent(s) or the legal guardian(s), foster parent(s), surrogate parent(s), or person acting in the place of a 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. The Department proposes to replace the definition with “as defined at N.J.A.C. 6A:32-2.1.” The proposed amendment will provide consistency in how the term is used in Title 6A of the New Jersey Administrative Code.

The Department proposes a new term and definition for “primary language” to mean “the language or mode of communication in which a ML is most fluent and/or speaks more regularly than any other language. In the case of a student, the primary language is the language normally used by the student’s parent.” The proposed new term will differentiate between the language a student may acquire from home (that is, native language) and the language a student prefers to speak and/or has the most command (that is, primary language), although the two languages may be the same for some students.

The Department proposes to remove the defined term “review process” in order to avoid confusion within sections of N.J.A.C. 6A:15. The intended applicability of the term appears only at N.J.A.C. 6A:15-1.3, and its usage in that section is clear without the need for a specific definition.

The Department proposes to amend the definition for “sheltered English instruction,” which 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.” The Department proposes to replace “regular classroom teachers who have received training on strategies” with “classroom teachers who deliver instruction in English, may not hold a bilingual/ESL endorsement, but have received training on strategies for instructional adaptation

pursuant to N.J.A.C. 6A:8-1.3.” The Department also proposes to replace “subject-area content” with “academic content areas.” The proposed amendments will create an intentional connection to N.J.A.C. 6A:8 and the requirements for all teachers to make the content accessible for all students, including MLs.

The Department proposes a new term and definition for “State Seal of Biliteracy” to mean “a recognition awarded pursuant to N.J.A.C. 6A:8-5.3.” The proposed term will link the education pathways in bilingual education for MLs to the rules at N.J.A.C. 6A:8 for the optional, asset-based recognition program that celebrates the study of world language and multilingualism as an academic and economic advantage.

The Department proposes a new term and definition for “Statewide home-language survey” or “Statewide HLS” to mean “a standardized questionnaire developed by the Department for school districts to use to help identify which students are potential MLs and which students will require a record review and an ELP assessment to determine whether they are eligible for placement in a LIEP. The Statewide HLS will provide school districts with a tool that will be used throughout New Jersey.

The Department proposes a new term and definition for “student with interrupted formal education” or “SIFE” to mean “a ML in grades four to 12 who has experienced disruptions in their formal education that took place outside of the United States.” The Department referenced “their formal education in their native country” even though the term references a singular student to avoid the use of gender-specific pronouns. The proposed term provides consistency regarding its use across all New Jersey school districts.

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

Pursuant to N.J.S.A. 18A:35-17 and Section 3113 of the ESEA, as reauthorized by the ESSA, the State must develop a standardized process for identifying students who are eligible for ML services. This section delineates the steps school districts must take to identify MLs at the time of enrollment.

The Department proposes amendments to clarify the identification process for preschool students because it is slightly different than the process for identifying students in kindergarten through 12th grade. The proposed amendments also will reorganize the multi-step process to clarify the difference among the three steps and who can complete each step.

The Department proposes an amendment at N.J.A.C. 6A:15-1.3(a), which requires a district board of education to use a multi-step process to determine, at the time of enrollment, the native language of each ELL. The Department proposes to replace “the native language of each ELL” with “identify ML(s) enrolled in the school district” to align the regulation with ESSA Section 3113(b)(2).

The Department proposes to recodify existing N.J.A.C. 6A:15-1.3(a)1, which requires school districts to maintain a census indicating all identified students whose native language is other than English, as new N.J.A.C. 6A:15-1.3(b). The Department also proposes amendments to replace “census” with “roster” and to add “and who are MLs” at the end. The proposed recodification and amendments reflect that the roster must be created after the multi-step identification process occurs.

The Department proposes to recodify and amend existing N.J.A.C. 6A:15-1.3(a)2 as new N.J.A.C. 6A:15-1.3(a)1 to further clarify that the first step in the multi-step process begins with

the school district’s administration of the Statewide HLS. The existing regulation requires a district board of education to develop a screening process, initiated by a home-language survey, to determine which students in kindergarten to 12th grade whose native language is other than English must be screened further to determine English language proficiency. The regulation also requires the screening to be administered 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 add “to each student enrolled in the school district” after “administer” to emphasize the requirement that the Statewide HLS must be administered to each student. The Department also proposes to require screening of all preschool students. The Department further proposes to replace “must be screened further to determine English language proficiency” with “and, therefore, may be a ML.” The Department further proposes to replace “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” with “completed in writing or by verbal interview by any individual with knowledge of the student, such as a parent(s), trained school district personnel, or a bilingual or ESL teacher.” The proposed amendments will further clarify that the first step in the multi-step process begins with the school district’s administration of the Statewide HLS. Although this section was amended as part of the 2022 rulemaking, further clarification regarding the Statewide HLS delivery mode and who is qualified to administer the Statewide HLS is necessary.

The Department proposes new N.J.A.C. 6A:15-1.3(a)2 to establish the second step to identify a student as an ML. The proposed paragraph states “[f]ollowing the administration of Statewide HLS, the school district shall conduct a records review process to determine whether the student is a ML.” The Department also proposes new N.J.A.C. 6A:15-1.3(a)2i to state that the records review process may include, but is not limited to, reviewing available information about the student’s overall academic performance from current and/or prior years, observations of teaching staff members who have worked with the student, interviews with the student or the student’s family in their primary language, and/or additional school records as needed and in compliance with State and Federal student privacy laws.

The Department proposes to recodify the first two sentences at existing N.J.A.C. 6A:15-1.3(b) as new N.J.A.C. 6A:15-1.3(a)3. The first two sentences state the following: “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 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 language proficiency test and who have at least one other indicator shall be considered ELLs.” The Department proposes to replace “not screened out and whose native language” with “found eligible through (a)1 or (a)2 above and whose primary language.” The Department also proposes to replace “Department standard” with “Department-established cut score” and to add “and shall be offered entry into the district board of education’s LIEP” at the end. The proposed amendments clarify the third step in the process to identify students in kindergarten through grade 12. The Department further proposes new N.J.A.C. 6A:15-1.3(a)3i to require district boards of education to identify as MLs all preschool students who are identified, pursuant to the processes set forth at N.J.A.C. 6A:15-1.3(a)1 and 2, as having a primary language other than English. The proposed paragraph also will require, beginning in the July prior to the start of their kindergarten year, that the district board of education administer an ELP assessment to preschool MLs to determine the ML’s English language proficiency level. The proposed regulation is necessary because preschool students identified in the first two steps of the identification process

upon enrollment do not take an English proficiency assessment, unlike students in kindergarten through grade 12. Instead, the preschool students are administered the assessment at the start of their kindergarten year. The Department also proposes to recodify the last sentence at existing N.J.A.C. 6A:15-1.3(b), which requires the district board of education to use age-appropriate methodologies to identify preschool ELLs to determine their individual language development needs, as new N.J.A.C. 6A:15-1.3(a)3ii.

N.J.A.C. 6A:15-1.4 Bilingual programs for English language learners

District boards of education are required to provide MLs with all educational activities and programs that they need to meet or exceed the NJSLs. This section sets forth the types of programs, activities, and services required to be provided by all New Jersey public schools where MLs are enrolled.

The Department proposes to replace the section heading with “District board of education requirements, including LIEPs for multilingual learners” to more accurately reflect the content of the section, as proposed for amendment.

The Department proposes amendments throughout this section to more clearly define the services that all school districts are required to implement in preschool through grade 12 when they have identified at least one of their enrolled students as a ML. The Department proposes to restructure N.J.A.C. 6A:15-1.4(a) to provide an overview of school district responsibilities when providing services to MLs, and to amend N.J.A.C. 6A:15-1.4(b) through (i) to detail the requirements of the specific programs, which may not apply to all MLs.

The Department proposes amendments at N.J.A.C. 6A:15-1.4(a), which requires district boards of education to provide students in kindergarten to 12th grade identified as MLs with all required courses and support services to prepare MLs to meet the NJSLs for high school graduation. The Department proposes to replace “kindergarten” with “preschool” and to add “and 18A:7F-54” after “N.J.S.A. 18A:7F-46.” The Department further proposes to replace “all required courses” with “equal educational opportunities and all educational activities and programs, including required courses,” respectively. The Department also proposes to add “or exceed” after “meet” in this subsection and throughout the section, where applicable. The Department further proposes to add the instructional opportunities shall be designed to assist MLs to fully comprehend all subject matter and demonstrate their mastery of all NJSLs academic content areas. The Department also proposes to recodify the existing second sentence, which states the support services may include tutoring, after-school programs, summer programs, and remedial services as needed by ELLs, as N.J.A.C. 6A:15-1.4(a)1. The Department to replace “tutoring, after school programs, summer programs, and remedial services” with “individualized and targeted supports.” The Department continues to promote tutoring, extended-day services, and summer programs and encourages school districts to prioritize MLs, particularly those disproportionately affected by the COVID-19 pandemic. By replacing the specific program language with “targeted supports,” the Department seeks to clarify that all instructional opportunities must be designed to meet the specific needs of each ML. The proposed amendments will emphasize the alignment to N.J.A.C. 6A:7 and 6A:8 to ensure that activities and programs are implemented equitably and aligned to the standards and expectations of all students. The proposed amendments also will more clearly state the requirement that a district board of education must further develop a ML’s mastery in the student’s primary language in support of the student’s development of English proficiency.

The Department proposes to relocate the third sentence at N.J.A.C. 6A:15-1.4(a), which requires all district boards of education to provide appropriate instructional programs to eligible preschool ELLs based on need according to the New Jersey Preschool Program Implementation Guidelines, 2015, to new N.J.A.C. 6A:15-1.4(c). The Department proposes to delete the last sentence at N.J.A.C. 6A:15-1.4(a), which states that the “guidelines provide developmentally appropriate recommendations for good practice and are intended for school districts that provide preschool programs.” Instead, the Department proposes at new N.J.A.C. 6A:15-1.4(c) to add “and the New Jersey Preschool Teaching and Learning Standards of Quality, pursuant to N.J.A.C. 6A:13A, Elements of High-Quality Preschool Programs,” at the end. School districts already are required to ensure that preschool programs meet the program standards set forth at N.J.A.C. 6A:13A-3.1(c)5; therefore, the proposed amendment is a clarification and a clearer connection to the chapter governing preschool programs. The Department proposes new N.J.A.C. 6A:15-1.4(c)1 to state “[a] program that meets the New Jersey Preschool Teaching and Learning Standards of Quality and is approved pursuant to N.J.A.C. 6A:6A:13A will be considered a preschool LIEP.” A program that is approved pursuant to N.J.A.C. 6A:13A and aligned to the preschool standards will be found to meet the needs of the school district’s MLs. The proposed amendments will clarify the standards of LIEP programs for preschools that educate MLs.

The Department proposes new N.J.A.C. 6A:15-1.4(a)2 to require the district board of education to ensure that educational services, activities, and programs incorporate a linguistically and culturally responsive, multicultural curriculum, in accordance with N.J.S.A. 18A:35-4.35, 4.36, and 4.36a, to ensure educational equity as aligned to the district board of education’s comprehensive equity plan, pursuant to N.J.A.C. 6A:7. The proposed paragraph will increase the focus on, and implementation of, programs designed to use language and culture as an asset.

The Department proposes new N.J.A.C. 6A:15-1.4(b) to list the main types of LIEPs that must be provided to all MLs when a school district has at least one enrolled ML. Proposed new N.J.A.C. 6A:6A:15-1.4(b)1 will require a district board of education to provide appropriate instructional programs to preschool MLs pursuant to N.J.A.C. 6A:15-1.4(b). Proposed new N.J.A.C. 6A:15-1.4(b)2 will require, whenever there are 20 or more MLs in kindergarten through 12th grade in any one language classification enrolled in the school district, a LIEP to include bilingual education or dual language immersion programs, unless waived pursuant to N.J.A.C. 6A:15-1.15. Proposed new N.J.A.C. 6A:15-1.4(b)3 will require the school district to provide an ELS program whenever 10 or more MLs in kindergarten through 12th grade are enrolled. The requirement is at existing N.J.A.C. 6A:15-1.4(c) and is being relocated for clarity. The Department proposes to recodify existing N.J.A.C. 6A:15-1.4(b), which requires a district board of education to establish English language services when there are at least one, but fewer than 10, ELLs enrolled in the school district, as new N.J.A.C. 6A:15-1.4(b)4. Proposed new N.J.A.C. 6A:15-1.4(b)5 states that instructional alternative programs may be implemented pursuant to N.J.A.C. 6A:15-1.15. The proposed regulation will better align the section with the State law that requires school districts to implement a bilingual education program when 20 or more students are enrolled (N.J.S.A. 18A:35-18), unless the school district qualifies for a waiver. The proposed term “LIEP” includes a “bilingual program” as required under State law. The proposed regulations will better organize the section but will not change existing requirements.

The Department proposes to recodify existing N.J.A.C. 6A:15-1.4(c), which requires the district board of education to establish an ESL program that provides at least one period of ESL instruction based on student language proficiency whenever there are 10 or more MLs enrolled in the school district, as new N.J.A.C. 6A:15-1.4(e). The Department proposes to amend new N.J.A.C. 6A:15-1.4(e) to replace “one period of ESL instruction” with “one class period of ESL

instruction each day in session” and “student language proficiency” with “a student’s English language proficiency,” respectively. The proposed amendments will clarify that the focus of ESL is to develop English proficiency. The term “language proficiency” unfairly presumes that a student is not proficient in any language when a ML may already be proficient in a language (that is, native or primary language).

The Department proposes to amend N.J.A.C. 6A:15-1.4(d), which requires a district board of education to establish bilingual education programs whenever there are 20 or more MLs in any one language classification enrolled in the school district. The Department proposes to add “or dual language immersion” after both references to “bilingual education” to emphasize the value and role of instruction in primary language to further development and mastery of English language proficiency. The Department proposes the same amendment throughout the section, where necessary.

The Department proposes amendments at N.J.A.C. 6A:15-1.4(d)1, which requires bilingual education to be designed to prepare MLs to acquire sufficient English skills and content knowledge to meet the NJSLs. The paragraph also requires that all MLs participating in bilingual education programs receive ESL instruction. The Department proposes to replace “sufficient” with “proficient” and “ESL instruction” with “a class period of ESL instruction each day in session.” The proposed amendments will clarify that MLs participating in bilingual and dual language immersion programs must meet English language proficiency as defined by the ELP assessment.

The Department proposes amendments at N.J.A.C. 6A:15-1.4(d)2, which requires bilingual education programs to include a curriculum that addresses the NJSLs, the English language development standards, and the use of two languages. The paragraph also requires bilingual education curriculum to be adopted by the district board of education. The Department proposes to require the bilingual curriculum to “include primary language instruction delivered to further master literacy in the primary language and as a support in the development of English proficiency.” The Department also proposes to relocate the requirement for the district board of education to adopt the bilingual education curriculum at new N.J.A.C. 6A:15-1.4(d)4. The proposed amendments will emphasize the need for school districts to ensure students receive instruction that will further their mastery of literacy in their primary language, as well as English. The goal of bilingual education programs is to strengthen students’ multilingual skills.

The Department proposes to delete existing N.J.A.C. 6A:15-1.4(e), which requires ELLs to be provided with equitable instructional opportunities to participate in all non-academic courses necessary to meet the NJSLs, including comprehensive health and physical education, the visual and performing arts, and career awareness programs. The subsection also requires instructional opportunities to be designed to assist ELLs to fully comprehend all subject matter and demonstrate their mastery of content matter. The Department proposes to delete this subsection as because N.J.A.C. 6A:15-1.4(a), as proposed for amendment, requires school districts to provide MLs with required services and courses. The proposed amendments at N.J.A.C. 6A:15-1.5(a) also capture the requirement that instructional opportunities must be designed to assist MLs to fully comprehend all subject matter and that all MLs must have access to all courses necessary to meet or exceed the NJSLs.

The Department proposes to recodify the first sentence at existing N.J.A.C. 6A:15-1.4(h) as new N.J.A.C. 6A:15-1.4(f) and (f)1, 2, 3, and 4. The existing subsection provides that a district board of education may establish dual-language bilingual education programs in its schools and may make provisions for the coordination of instruction and services with the school

district's world languages program. The existing regulation also requires dual language bilingual education programs to enroll students whose primary language is English, and to be designed to help students achieve proficiency in English and in a second language while mastering subject-matter skills. The existing regulation further requires, to the extent necessary, that instruction is in all courses or subjects of study that allow students to meet all grade promotion and graduation standards. Lastly, the existing regulation requires, where possible, classes in dual-language bilingual programs to be comprised of approximately equal numbers of ELLs and of students whose native language is English. The Department proposes to amend this provision to replace "approximately equal numbers of ELLs and of students whose native language is English" with "at least 50 percent MLs." The proposed amendment will clarify the composition of students in a dual language immersion program. The Department proposes new N.J.A.C. 6A:15-1.4(f)5 to state that dual language immersion programs that are not established to provide LIEP services required pursuant to N.J.S.A. 18A:35-15 through 18A:35-26 do not have to comply with the chapter's requirements. The proposed recodifications and new regulation will clarify that school districts implementing a dual language immersion program for the purpose of providing the required LIEP to MLs must meet the chapter's standards. However, a school district's dual language immersion program does not have to meet the chapter's requirements if it is being offered by the school district but not as part of a required LIEP.

The Department proposes new N.J.A.C. 6A:15-1.4(g) to allow a district board of education to establish a newcomer program for a limited duration in time to address the needs of recent immigrant students, particularly SIFEs, before transition to a general education classroom. The proposed subsection will require a high-quality newcomer program to 1) be age-appropriate; 2) include content that relates to the NJSLs; 3) include social-emotional learning; and 4) include courses that are credit-bearing and count toward graduation or promotion requirements to allow students to meet grade-level standards within a reasonable period of time. The Department proposes to specify supports for students who may require additional academic and/or socio-emotional activities and programs. School districts have the option to create a newcomer program. However, if developed, the program must meet the criteria at new N.J.A.C. 6A:15-1.4(g) for newcomer students, particularly SIFEs, to receive the supports they need to be successful in school.

The Department proposes to recodify existing N.J.A.C. 6A:15-1.4(f) and (g) as N.J.A.C. 6A:15-1.4(h) and (i) respectively.

The Department proposes to amend new N.J.A.C. 6A:15-1.4(i), which requires the district board of education to design additional programs and services to meet the special needs of eligible MLs and include, but not be limited to, remedial instruction through Title I programs; special education; school-to-work programs; computer training; and gifted and talented education services. The Department proposes to replace "remedial instruction" with "individualized and targeted supports" and "school-to-work programs; computer training" with "career and technical education programs," respectively. The Department also proposes to add "supports to help MLs earn a Seal of Biliteracy pursuant to N.J.A.C. 6A:8-5.3; and individualized learning opportunities, pursuant to N.J.A.C. 6A:8-5.1." The proposed amendments will shift the delivery of services to an asset-based design and expand its connection to the individualized learning opportunities that district boards of education are required to provide for all students, pursuant to N.J.A.C. 6A:8-5.1.

The Department proposes new N.J.A.C. 6A:15-1.4(k) to allow the district board of education to develop and adopt a policy that describes how MLs may use credits earned in an ESL course to meet the graduation requirements in world languages or English language arts (ELA), pursuant to N.J.A.C. 6A:8-5.1. The Department also proposes N.J.A.C. 6A:15-1.4(k)1 to

require, if a district board of education’s policy allows students to apply ESL coursework toward their ELA course requirements, the ESL coursework to be aligned to grade-level NJSLs for ELA. The Department recognizes that MLs enter New Jersey schools with a level of proficiency in a world language other than English. ESL is a second language class that is intended to develop a student’s English language skills and that is designed for MLs whose first language is not English. The proposed subsection acknowledges that the goal of ESL and world language instruction is to produce multilingual speakers. The Department further understands that MLs should be given the opportunity to further their proficiency in their primary language, English, and other languages. The Department acknowledges that recognizing an ML’s primary language as a language that has value in the school setting (that is, leads to the awarding of credits) is another way to further the asset-based shift the Department is working toward.

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

This section sets forth the process for school districts to request a waiver from the Department to implement an instructional program alternative instead of the required bilingual education program.

The Department proposes to recodify existing N.J.A.C. 6A:15-1.5 as new N.J.A.C. 6A:15-1.15. The Department proposes the recodification to first outline all requirements under the State law regarding bilingual education before stating how a school district may be waived from a requirement.

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

This section sets forth the approval procedure of the plan submitted every three years for school districts that implement a program or service for MLs.

The Department proposes to recodify existing N.J.A.C. 6A:15-1.6 as new N.J.A.C. 6A:15-1.5.

The Department proposes new N.J.A.C. 6A:15-1.5(b) to require a district board of education’s LIEP plan to demonstrate how the school district is complying with this chapter and providing high-quality supports to MLs. The Department proposes new N.J.A.C. 6A:15-1.5(b)1 to require that a district board of education’s LIEP plan demonstrate that LIEP curricula for kindergarten through 12th grade include or are aligned with the NJSLs, the English language development standards, and a multicultural curriculum, pursuant to N.J.S.A. 18A:35-4.26a and N.J.A.C. 6A:7. The Department proposes new N.J.A.C. 6A:15-1.5(b)2 to require that a district board of education demonstrates, for preschool, how the ML instruction and support meets the language instruction requirements in the New Jersey Preschool Program Implementation Guidelines and the New Jersey Preschool Teaching and Learning Standards of Quality, pursuant to N.J.A.C. 6A:13A, the NJSLs, the Early Language Development Standards for preschool, and a multicultural curriculum, which is parallel to the existing requirement for kindergarten through grade 12. The proposed paragraph emphasizes that LIEP plans must demonstrate how a school district’s ML supports meet the various and relevant standards in N.J.A.C. 6A:7, 6A:8, and 6A:13A, as well as describe the required plan components for school districts with preschool MLs.

The Department proposes new N.J.A.C. 6A:15-1.5(b)3 to require the LIEP plan to demonstrate that MLs have equitable access to educational activities and programs in a manner aligned to the district board of education’s comprehensive equity plan, pursuant to N.J.A.C. 6A:7. The proposed paragraph will emphasize the connection between the two required school district plans (that is, the LIEP plan and the comprehensive equity plan).

The Department proposes new N.J.A.C. 6A:15-1.5(b)4 to require the LIEP plan to demonstrate that school district staff engage in ongoing and continuous program evaluation that must include regular reviews of student performance data (for example, graduation rates and assessment results) and other measures (for example, absenteeism, disciplinary records, and course enrollment) to evaluate whether MLs in the school district have equitable access to educational opportunities, including, but not limited to, gifted and talented programs, advanced coursework and dual enrollment, work-based learning opportunities, extra-curricular activities, and career counseling.

The Department proposes new N.J.A.C. 6A:15-1.5(b)5 to require the LIEP plan to demonstrate that preschool students participate in instructional activities pursuant to N.J.A.C. 6A:13A. Including preschool students in LIEP plans will ensure that schools with identified students who are developing linguistic skills in multiple languages are supported as early in their educational careers as possible.

The Department proposes new N.J.A.C. 6A:15-1.5(b)6 to require the LIEP plan to demonstrate that the bilingual and dual language immersion programs promote bilingualism, biliteracy, cross-cultural competency, high levels of academic achievement in both languages, and a path, if available, toward attaining the State Seal of Biliteracy.

The Department proposes to recodify N.J.A.C. 6A:15-1.5(a)1 and (a)1i through vii as new N.J.A.C. 6A:15-1.5(c) and (c)1 through 7, respectively.

The Department proposes new N.J.A.C. 6A:15-1.5(d) to state that the Department will review the plan to ensure that the district board of education has a system of support for all MLs that is aligned to this chapter. The Department also proposes to recodify the second sentence at N.J.A.C. 6A:15-1.5(a), which states “[a]t its discretion, the Department may request modifications, as appropriate,” as the second sentence at new N.J.A.C. 6A:15-1.5(d). The Department further proposes to add “and shall determine whether to approve the district board of education’s plan” at the end. The proposed subsection will more clearly state the Department’s ability to request changes to the LIEP plan to ensure that school districts are providing the highest possible quality of services to students.

The Department proposes to recodify N.J.A.C. 6A:15-1.5(b) as new N.J.A.C. 6A:15-1.5(e).

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

This section sets forth the supportive services a student enrolled in a LIEP must have access to in addition to the programs described in N.J.A.C.

The Department proposes to recodify this section as new N.J.A.C. 6A:15-1.6.

The Department proposes to amend new N.J.A.C. 6A:15-1.6(a), which states that students enrolled in bilingual, ESL, and English language services programs shall have full access to educational services available to other students in the school district. The Department proposes to add “equal educational opportunities, including” before “full access” and add “opportunities and” before “services.”

The Department proposes to amend new N.J.A.C. 6A:15-1.6(b), which states that, to the extent that is administratively feasible, supportive services to ELLs such as counseling, tutoring, and career guidance, should be provided by bilingual personnel who are familiar with and knowledgeable of the unique needs and background of the ELLs and their parents. The

Department proposes to replace “[t]o the extent that is administratively feasible,” with “[a] school district shall provide MLs with linguistically and culturally responsive.” The Department also proposes to add “academic” before “counseling” and add mental health counseling as a type of supportive services for MLs. The Department further proposes to add that the bilingual personnel must be “trained in social-emotional learning.” The Department also proposes to replace “the unique needs and background of the ELLs and their parents” with “the unique assets and needs of the MLs, including newcomers and SIFEs, and their parents.” The proposed amendments will expand supportive services to be more inclusive, linguistically and culturally responsive, align to research that shows the benefits of more holistic supports, and to ensure bilingual personnel training includes social-emotional learning.

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

This section sets forth the training requirements for staff who provide instructional and educational activities and programs to MLs.

The Department proposes to recodify this section as new N.J.A.C. 6A:15-1.7.

The Department proposes to replace the existing section heading, “Inservice training,” with “Professional development.”

The Department proposes amendments to the section to expound on the types of required trainings for staff that school districts must include as part of the school district’s annual professional development plan, pursuant to N.J.A.C. 6A:9C, Professional Development. The proposed amendments align to the Department’s goal to more clearly link the various required plans to help school districts present cohesive and connected LIEP plans, professional development plans (N.J.A.C. 6A:9C), equity plans (N.J.A.C. 6A:7), and preschool plans (N.J.A.C. 6A:13A).

The Department proposes amendments to the first sentence at new N.J.A.C. 6A:15-1.7(a), which requires the district board of education to develop a plan for in-service training for bilingual, ESL, and mainstream teachers; administrators who supervise bilingual/ESL programs; and administrators and any personnel who observe and evaluate teachers of ELLs. The Department proposes to add “[a]s part of the professional development requirements at N.J.A.C. 6A:9C” at the beginning of the subsection. The Department also proposes to replace “plan for inservice training” with “professional development plan.” The Department further proposes to replace “mainstream teachers” with “academic content teachers whose classroom instruction is in English.” The proposed amendments will ensure the chapter’s professional development requirements align with the requirements set forth at N.J.A.C. 6A:9C. The proposed amendments also will clarify the district board of education’s responsibilities are for professional development related to providing MLs adaptational strategies, ESL curriculum, and culturally accessible instruction. The Department proposes to delete the third sentence at new N.J.A.C. 6A:15-1.7(a), which requires all bilingual and ESL teachers to receive training in the use of the ESL curriculum. The requirement will be part of new N.J.A.C. 6A:15-1.7(b)2.

The Department proposes to recodify the second sentence at new N.J.A.C. 6A:15-1.7(a), which requires the plan to include instructional strategies and appropriate assessments to help ELLs meet the NJSLs and the WIDA English language development standards, as new N.J.A.C. 6A:15-1.7(b) and (b)1. The Department also proposes to add “adaptational” before “strategies” and “training on” before “appropriate assessments,” respectively.

The Department proposes to recodify N.J.A.C. 6A:15-1.7(b), which requires the school district's professional development plan to include the needs of bilingual and ESL teachers and for the teachers' needs to be addressed through inservice training, as new N.J.A.C. 6A:15-1.7(b)2. The Department also proposes to amend the paragraph to state that the required training is regarding the use of the ESL curriculum and the English language development standards.

The Department proposes new N.J.A.C. 6A:15-1.7(b)3 to require the district board of education's professional development plan to ensure all teachers receive training on the English language development standards and how to provide culturally accessible instruction and appropriate modifications and accommodations for MLs. The proposed paragraph will ensure all teachers receive training on the English language development standards, regardless of whether the teachers have a bilingual and/or ESL endorsement to the instructional certificate.

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

This section sets forth the certification requirements for teachers who teach MLs.

The Department proposes to recodify the section as new N.J.A.C. 6A:15-1.8.

The Department proposes new N.J.A.C. 6A:15-1.8(b) to require teachers of dual language immersion programs to 1) hold a valid New Jersey instructional certificate with an endorsement for the appropriate grade level and/or academic content area and an endorsement in bilingual/bicultural education or world languages; 2) demonstrate fluency in the language(s) of their instruction, pursuant to N.J.A.C. 6A:9B-11.5; and 3) teach in the academic content area(s) authorized by the endorsement to their instructional certificate.

The Department proposes to recodify N.J.A.C. 6A:15-1.8(b) and (c) as new N.J.A.C. 6A:15-1.8(c) and (d), respectively.

The Department proposes new N.J.A.C. 6A:15-1.8(e) to reference the requirement at N.J.A.C. 6A:9B-14.22 for all instructional support staff who provide bilingual instructional support services in preschool through grade 12 to hold a bilingual language paraprofessional credential. As proposed at N.J.A.C. 6A:9B-14.22 in a separate rulemaking, the paraprofessional credential will provide a certificate pathway for paraprofessionals who are proficient in a language other than English and utilize the language while providing instructional support for MLs.

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

This section sets forth the steps that a school district must take to assess an ML and to determine an ML's readiness to exit from ML status. A student who is ready to exit from ML status has met a Department-established cut score on the English language proficiency assessment and receives a determination that supports the exit based on a teacher(s) observation of the student's performance in classes where the delivery of instruction is English. A student who exits from ML status is ready to transition to, and academically succeed in, classes where instruction is in English.

The Department proposes to recodify the section as new N.J.A.C. 6A:15-1.9.

The Department proposes to replace the existing section heading, "Bilingual, English as a second language, and English language services program enrollment placement, assessment, exit, and reentry," with "LIEP placement, assessment, exit, and reentry."

The Department proposes amendments to the first sentence at N.J.A.C. 6A:15-1.9(c), which requires MLs enrolled in a LIEP to be placed in a monolingual English program when they have demonstrated readiness to exit the program through Department-established criteria on an ELP assessment and a Department-established English language observation form. The Department proposes to replace “a monolingual English program” with “classroom(s) where the primary language of instruction is English.” The Department also proposes to replace “through Department-established criteria on an ELP assessment” with “by achieving the Department-established cut score on an ELP or alternate ELP assessment.” The Department further proposes to delete “and a Department-established English language observation form.” The Department also proposes to delete the second sentence, which requires a student to first achieve the Department-established English proficiency standard as measured by an ELP assessment. The proposed amendments will more clearly indicate that achieving the Department-established cut score on the assessment is the first step to exit a ML from a LIEP and the second step is to further assess the student’s readiness to exit through the use of a Department-established English language observation form.

The Department proposes to recodify existing N.J.A.C. 6A:15-1.9(f) as new N.J.A.C. 6A:15-1.9(d).

The Department proposes to recodify existing N.J.A.C. 6A:15-1.9(d) as new N.J.A.C. 6A:15-1.9(e). The Department proposes new N.J.A.C. 6A:15-1.9(e)1 to state that “[a] student who is identified as a ML and whose parent refuses placement in a LIEP shall still access and meet the academic expectations of the NJSLS. Pursuant to N.J.A.C. 6A:8 and N.J.A.C. 6A:15-1.6, a district board of education shall ensure that students whose parents refuse placement are provided the appropriate instructional adaptations and appropriate assessment modifications and accommodations for Statewide assessments.”

The Department proposes new N.J.A.C. 6A:15-1.9(f) to require the district board of education to monitor, for a minimum of two years, the academic progress of students who are exited from a LIEP to ensure that the students are continually meeting or exceeding the NJSLS when the curriculum and instruction are delivered in English. The proposed subsection will clarify the school district’s responsibility to evaluate, monitor, and assess the academic performance of former MLs and to support former and current MLs academic pathway toward graduation.

The Department proposes to recodify existing N.J.A.C. 6A:15-1.9(e), which sets forth the process for newly exited students who are not progressing in the mainstream English program to be considered for reentry to bilingual and ESL programs, as new N.J.A.C. 6A:15-1.9(g). The Department proposes to replace “the mainstream English program” with “classes where English is the primary language of instruction.” The proposed amendments will remove the assumed dichotomy that only programs in English are mainstream, thereby demoting programs where instruction is delivered in a world language other than English. The Department proposes similar amendments at new N.J.A.C. 6A:15-1.9(g)1 and 2.

The Department proposes amendments at new N.J.A.C. 6A:15-1.9(g)3, which requires the recommendation for retesting to be based on the teacher’s judgement 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. The Department proposes to replace “judgment” with “documented observation of a student’s academic performance and data-based determination.” The proposed amendments will identify the two-step process for exiting a ML

from a LIEP and clarify that a student’s exit from ML status is not solely dependent on a test score, but is also based on the observations of a teacher(s) who best knows the student.

N.J.A.C. 6A:15-1.11 Graduation requirements for English language learners

This section sets forth all the requirements for a ML to graduate from a public high school in New Jersey. The high school graduation requirements include a range of experiences that lead to program completion and that enable students to pursue a variety of individualized learning opportunities in accordance with N.J.A.C. 6A:8-5.1(a)2.

The Department proposes to recodify the section as new N.J.A.C. 6A:15-1.10.

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

This section sets forth the requirements for where a school district can conduct a bilingual, ESL, and English language services programs.

The Department proposes to recodify the section as new N.J.A.C. 6A:15-1.11.

The Department proposes to replace the existing section heading, “Graduation requirements for English language learners,” with “Graduation requirements for Multilingual learners.”

The Department proposes amendments to the section, which requires all bilingual, ESL, and English language services programs to be conducted within classrooms within the regular school buildings of the school district pursuant to N.J.S.A. 18A:35-20. The Department proposes to replace “bilingual, ESL, and English language services programs” with “kindergarten through grade 12 LIEPs” to clarify that the regulation does not apply to preschool programs. The Department proposes to delete “regular school buildings of the” before “school district” because the reference is unnecessary. The Department also proposes at the end to add “except under the following circumstances.” The Department also proposes new N.J.A.C. 6A:15-1.11(a)1 to allow a LIEP to be conducted in another school district as part of a joint program, pursuant to N.J.A.C. 6A:15-1.13. The Department further proposes new N.J.A.C. 6A:15-1.11(a)2 to allow a ML’s individualized learning opportunity, pursuant to N.J.A.C. 6A:8-5.1(a)2, to occur outside of the school district’s classrooms. The proposed exceptions will ensure that MLs are able to access opportunities outside the school district’s classroom as N.J.A.C. 6A:8-5.1(a)2 is meant to provide rich learning opportunities beyond the confines of the classroom.

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

This section sets forth the requirements a school district must follow to notify a parent of a student who is identified as a ML.

The Department proposes to recodify the section as new N.J.A.C. 6A:15-1.12.

The Department proposes amendments at N.J.A.C. 6A:15-1.12(a), which requires each district board of education to notify, by mail, the parents of ELLs of the fact that their child has been identified as eligible for enrollment in a bilingual, ESL, or English language services education program. The Department proposes to replace “mail” with “written communication” to clarify that all notifications must be in writing, but they do not have to be sent by mail. The proposed amendment will provide school districts with flexibility in how they provide notifications and reflects that many school districts used technology to communicate with parents

during the COVID-19 pandemic rather than regular mail. The Department also proposes to replace “enrollment” with “placement” to make a clear distinction between terms; students are enrolled in a school district and placed in various services, activities, and programs.

The Department proposes to recodify the second sentence at N.J.A.C. 6A:15-1.12(a), which requires the district board of education to issue the notification within 30 days of the child’s identification, as new N.J.A.C. 6A:15-1.12(a)1. The Department proposes to replace “30 days of the child’s identification” with “30 calendar days of the start of the school year.” The Department also proposes to delete the sentence that requires the notice to include a statement that the parents may decline their child’s enrollment in a bilingual program, and they shall be given an opportunity to do so if they choose because the provision will be contained at new N.J.A.C. 6A:15-1.12(b)8. The Department proposes new N.J.A.C. 6A:15-1.12(a)2 to require the school district to issue the notification within 14 calendar days of a student being placed in a LIEP when a student enrolls after the beginning of the school year. The proposed amendments will clarify that the 30-day deadline is calendar days and when to notify a parent a student who is enrolled after the school year has started, which aligns to the ESSA requirements regarding notification when a child is identified as a ML.

The Department proposes amendments at N.J.A.C. 6A:15-1.12(b)4, which requires the notice to include the method of instruction the school district will use to serve the student, including a description of other instruction methods available and how those methods differ in content, instructional goals, and the use of English and a native language, if applicable. The Department proposes to replace “native language” with “primary language” because the definition of “native language” at N.J.A.C. 6A:15-1.2 is proposed for deletion. The proposed amendment in this section will ensure consistency in use of terms across the chapter. The same amendment is proposed at N.J.A.C. 6A:15-1.12(d).

The Department proposes amendments at N.J.A.C. 6A:15-1.12(b)6, which requires the notice to include the program's exit requirements, the expected rate of transition into a classroom not tailored for ELLs and, in the case of high school students, the expected rate of graduation. The Department proposes to replace “rate of transition into which a classroom not tailored for ELLs” with “amount of time that the ML needs to successfully achieve in classrooms where the language of instruction is English.” The proposed amendment will align with the Department’s shift to asset-based language and focus on the appropriate amount of time given to a ML to ensure success once exited from a LIEP.

The Department proposes new N.J.A.C. 6A:15-1.12(b)8 to require the notice to include a statement that the parent may decline their child’s enrollment in a LIEP, and that the parent shall be given an opportunity to do so or to select a different type of LIEP service and available at the child’s school. The regulation is contained at existing N.J.A.C. 6A:15-1.13(a).

The Department proposes to amend recodified N.J.A.C. 6A:15-1.12(d), which requires progress reports to be written in English and in the primary language of the parent of a student enrolled in the LIEP, unless the district board of education can demonstrate and document in the three-year plan that the requirement would be an unreasonable burden. The Department proposes to delete the provision regarding the district board of education demonstrating that the requirement to provide progress reports in English and in the parent’s primary language would be an unreasonable burden because school districts that offer LIEPs have the resources to provide progress reports in the applicable primary languages and advancements in online translators also allow for free translations in most primary languages spoken in New Jersey.

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

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

The Department proposes to recodify this section as new N.J.A.C. 6A:15-1. 13.

The Department proposes to recodify the regulation as new N.J.A.C. 6A:15-1.13(a). The Department also proposes to replace “bilingual, ESL, or English language services programs” with “[a] LIEP” at new N.J.A.C. 6A:15-1.13(a)1. The Department proposes new N.J.A.C. 6A:15-1.13(a)2 to allow two district boards of education to join together to provide an individualized learning opportunity, pursuant to N.J.A.C. 6A:8-5.1(a)2, to a ML who chooses to utilize it to meet the 120-credit graduation requirement, in whole or in part. The proposed paragraph will clarify that school districts may join together to provide MLs across different school districts more choices in individualized learning opportunities. Small school districts may not be able to provide the same breadth of individualized learning opportunities (that is, work-based learning); by joining together, school districts will be able to create greater efficiencies and provide students with more options.

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

This section sets forth the requirements a school district must provide for the maximum practicable engagement of parent(s) of MLs.

The Department proposes to recodify the section as new N.J.A.C. 6A:15-1.14. The Department also proposes to replace the section’s heading, “Parental involvement,” with “Family engagement” to be more inclusive of a student’s family and to acknowledge the important role a student’s immediate and extended family plays in the student’s success in school.

The Department also proposes to replace the existing section heading, “Parental involvement,” with “Parental and Family engagement.”

The Department proposes an amendment at new N.J.A.C. 6A:15-1.14(b), which requires each district board of education implementing a bilingual education program to establish a parent advisory committee on bilingual education of which the majority membership must be parent(s) of ELLs. The Department proposes to add “[w]ith the exception of a district board of education implementing an English language services or ESL program” at the beginning to clarify which types of LIEPs are exempt from establishing a parent advisory committee. School districts that establish ELS or ESL LIEPs enroll less than 20 MLs across the school district. Implementing a parent advisory committee may be impractical for smaller school districts, but all school districts must be mindful of ensuring family engagement of all families in the school district.

N.J.A.C. 6A:15-1.15 Waiver process provided by statute

This proposed section sets forth the process for school districts to request from the Department a waiver to implement an instructional program alternative instead of the required bilingual education program.

The Department proposes to recodify existing N.J.A.C. 6A:15-1.5 as new N.J.A.C. 6A:15-1.15. The Department proposes amendments to the section to outline all statutory requirements before setting forth the process for a school district to request a waiver from a requirement.

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

This section states the statutory requirement for the State Board of Education to establish a State advisory committee on bilingual education. The section also establishes the required membership of the advisory committee and the committee's duties.

The Department proposes to amend the second sentence at N.J.A.C. 6A:15-1.16(a), which requires the Commissioner to appoint the members of the committee with representation from parents, institutions of higher education, bilingual and ESL teachers, district board of education members, school administrators, and lay persons. The Department proposes to add "and families of MLs" after "parents" and to replace "lay persons" with "community members."

The Department proposes to amend N.J.A.C. 6A:15-1.16(b), which states that the committee shall advise the Department in the formulation of policies and procedures relating to P.L. 1974, c. 197 (N.J.S.A. 18A:35-15 to 26). The Department proposes to delete "P.L. 1974, c. 197" because the cited statutes have been amended since first enacted in 1974.

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 readoption with amendments apply to the provision of activities, programs, and services that ensure MLs have the English language proficiency to access the academic content necessary to meet or exceed the NJSLs and to be prepared for both postsecondary education and the demands of the 21st century workplace. The proposed amendments are meant to clarify and improve the implementation of how New Jersey students who are in the process of learning English as an additional language are identified and are provided educational equity in services, activities, and programs. The expectation is that the shift to asset-based language will create opportunities to focus on student success, while acknowledging that the strengths of individual students contribute to their educational experience. The rules proposed for readoption with amendments connect the societal value placed on multilingual learners throughout the State and as outlined at N.J.A.C. 6A:8 through world language programs to the skills and knowledge that MLs possess when entering the classroom.

By clarifying the supports that school districts must provide to all MLs and by connecting those responsibilities to the requirements already in place, the Department expects to see the development of more efficient and effective LIEPs in every school and higher quality supports for MLs. As a consequence, MLs will feel valued as students who belong in the school system and they may be more likely to receive the supports they need to achieve the requirements to graduate high school. By providing more opportunities and reducing barriers to access graduation pathways, New Jersey will close the historically significant gap in the graduation rate between MLs and non-MLs.

Economic Impact

The rules proposed for readoption with amendments apply to the provision of activities, programs, and services that ensure MLs have the English language proficiency to access the academic content necessary to meet or exceed the NJSLs and to be prepared for both postsecondary education and the demands of the 21st century workplace. The Department does not anticipate that the proposed amendments will result in increased expenditures for school districts and other providers of public education since all publicly funded education programs in

New Jersey currently are required to provide language instruction educational programs for enrolled MLs and to provide a thorough and efficient education to all students. The Department does not anticipate that school districts will have to reallocate the distribution of State and Federal funds and resources to meet the requirements established by the proposed amendments, which are aligned with Federal and State laws related to multiculturalism, culture, and language as an asset because such requirements are connected to existing rules throughout Title 6A of the New Jersey Administrative Code, Title 18A of the New Jersey Statutes, and Federal laws. The identification of MLs in preschool will qualify school districts to receive Federal funding under Title III of the ESEA.

The proposed amendments also connect the chapter to the State Seal of Biliteracy, which may result in an increase in the number of students who earn the recognition and can apply their 21st century world language skills in the global marketplace. Increasing the rate of graduation of MLs who graduate with the skills to contribute to society are more likely to becoming productive citizens who can work to sustain and support their families.

Federal Standards Statement

The rules proposed for readoption with amendments are in compliance with, and do not exceed, Federal education requirements, including the ESSA and its implementing regulations, and will continue to advance the mission to ensure the provision of programs and services for MLs. There are no other Federal requirements that impact the rules proposed for readoption with amendments.

Jobs Impact

The Department does not anticipate that the rules proposed for readoption with amendments will result in the generation or loss of jobs.

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

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

Smart Growth Development Impact Analysis

There is an extreme unlikelihood the rules proposed for re adoption with 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 rules proposed for re adoption with amendments concern the provision of language instruction programs for MLs.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

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

Full text of the rules proposed for re adoption and the proposed amendments follows (addition indicated in boldface **thus**; deletions indicated in brackets [thus]):

Chapter 15. Bilingual Education

Subchapter 1. General Provisions

6A:15-1.1 General requirements

(a) The purpose of this chapter is to:

1. Ensure all [English language] **multilingual** learners [(ELLs)] (**MLs**) as defined in this chapter are provided with a free, appropriate public education pursuant to N.J.S.A. 18A:35-15 to 26;
2. Ensure the rights of [ELLs] **MLs** are protected;
3. Ensure the provision of [bilingual education and related services] **culturally and linguistically responsive, researched-based, and effective language instruction educational programs (LIEPs)**;
4. Assist district boards of education in providing [educational services to ELLs] **bilingual education and dual language immersion programs that promote bilingualism, biliteracy, cross-cultural competency, and high levels of academic achievement in English and the student's primary language(s); [and]**
5. **Prepare students with the knowledge and skills to be able to succeed in a global society;**
6. **Lead high school students, if they choose and if provided by the school district, to be on a path toward attaining the State Seal of Biliteracy in their primary language;**
- [5.] 7. Ensure the evaluation of the effectiveness of the **LIEPs and** education of [ELLs.] **MLs**;
8. **Ensure MLs receive equal educational opportunities, programs, and services necessary to achieve a thorough and efficient education; and**
9. **Ensure district boards of education are providing LIEPs that are aligned to**

the NJSLs, New Jersey Preschool Teaching and Learning Standards of Quality, English Language Development (ELD) standards for kindergarten through grade 12, and the Early Language Development Standards.

- (b) The rules of this chapter shall apply to all district boards of education [providing educational programs and services to ELLs].
- (c) The Department shall:
 - 1. Administer the provisions of this chapter;
 - 2. Provide **culturally and linguistically responsive** technical assistance to each district board of education in the implementation of [bilingual, ESL, and English language services programs] **LIEPs**; and
 - 3. Coordinate and monitor, in conjunction with the county offices of education, the local, State, and Federal programs designed to meet the educational needs of [ELLs] **MLs**.

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 (**ELP**) 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] **LIEP** in all courses or subjects [that a child is required by law or rule to] **provided in accordance with N.J.S.A.**

18A:35-18. Students in a bilingual education program receive[, given] **instruction** in the

[native] **primary** language of [ELLs] **MLs** enrolled in the program and [also] in English[; in the aural comprehension], **while also receiving ESL instruction. Educators use the primary language of instruction to enhance literacy in the primary language and as a support in the development of listening, speaking, reading, and writing** [of the native language of ELLs enrolled in the program, and in the aural comprehension, speaking, reading, and writing of] **skills in English[; and]. Students also receive instruction** in the history and culture of the country, territory, or geographic area that is the native land of the parents **and families** of [ELLs] **MLs** enrolled in the program, and in the history and culture of the United States.

“Bilingual part-time [component] **program**” means [a] **an instructional** program alternative in which students [are assigned to mainstream] **receive their academic content area classes in English** [program classes, but are scheduled daily for their developmental reading] **language arts (ELA)** and mathematics instruction with a certified bilingual teacher **who provides instruction in the primary language of the MLs in the program, as well as ESL instruction.**

“Bilingual resource program” means [a] **an instructional** program alternative in which students receive [on an individual basis] **instruction and resources that are individualized for each student,** daily instruction from a certified bilingual teacher in **academic content areas as identified** [subjects and with specific assignments] **by the school district, as well as ESL instruction.**

“Bilingual tutorial program” means [a] **an instructional** program alternative in which students receive one period of instruction from a certified bilingual teacher in [a] **an academic** content area required for graduation, [and] a second period of tutoring in [other] **another** required content area, **as well as ESL instruction.**

“Class period” means **the time allocated for instruction in academic content areas as part of the regular school schedule for each day in session as set forth at N.J.A.C. 6A:32-8.3. In a block schedule, weekly instruction is equivalent to one class period for each day of school in a given week.**

“Comprehensive equity plan” means the same as that term is defined pursuant to N.J.A.C. 6A:7-1.3.

“Cut score” means the same as that term is defined pursuant to N.J.A.C. 6A:8-1.3.

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

“[Dual-language bilingual education] Dual language immersion program” means, for the purpose of meeting the LIEP requirements at N.J.S.A. 18A:35-18 and this chapter, a full-time [program of instruction in elementary and secondary schools] LIEP that provides students structured English language instruction and instruction in a second language in all academic content areas [for ELLs and for native English speaking students enrolled]. MLs in the program receive instruction in their primary language, as well as ESL instruction. A dual language immersion program provides daily instruction in English and a minimum of 50 percent of instruction in the primary language of enrolled MLs. A dual language immersion program that is designed to support MLs is sometimes referred to as a two-way bilingual education program.

“Early Language Development Standards” means the preschool English language development standards for preschool students developed by WIDA . The standards correspond to five domains of children’s development and learning: approaches to learning, language and communication development, cognition and general knowledge, physical well-being and motor development, and social and emotional development. The standards incorporated herein by reference, are published by the Board of Regents of the University of Wisconsin System, on behalf of the WIDA Consortium and are available at <https://wida.wisc.edu/teach/early>.

“Educational activities and programs” means the same as that term is defined pursuant to N.J.A.C. 6A:7-1.3.

“Educational equity” means the same as that term is defined pursuant to N.J.A.C. 6A:7-1.3.

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

“English as a second language (ESL) program” means a daily [developmental] **class period of** second-language [program of at least one period of] **acquisition** instruction **within a LIEP and** based on [student] **a student’s English** language proficiency that teaches [aural comprehension, speaking, reading, and writing in English using second language teaching techniques,] **the English language development standards** 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” or **“ELD standards”** means the [2012] **2020** 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] **WIDA**. They are the standards and language competencies [ELLs] **in listening, speaking, reading, and writing that MLs** 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] **content areas. The standards are a version of English language arts that have been crafted to address the specific developmental stages of students learning English.** 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 [\[http://www.wida.us/standards/eld.aspx\]](http://www.wida.us/standards/eld.aspx)

<https://wida.wisc.edu/sites/default/files/resource/WIDA-ELD-Standards-Framework-2020.pdf>.

[“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 assessment” [(] or “ELP assessment[)]” means a Department-approved assessment that evaluates 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.

“English language services” means services designed to improve the English language skills of [ELLs] **MLs**. The services, provided in school districts with less than 10 [ELLs] **MLs in kindergarten to 12th grade**, are [in addition to] **part of** the regular school program and are designed to develop [aural comprehension, speaking, reading, and writing skills] **proficiency** in [English] **the ELD standards**.

“Equal educational opportunity” means as that term is defined pursuant to N.J.A.C. 6A:7-1.3.

“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] **LIEP**.

“High-intensity ESL program” means [a] **an instructional** program alternative in which students receive two or more class periods [a] **each day in session** 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] **LIEP, other than bilingual education and/or dual language immersion**, that may be established by a district

board of education in consultation with, and approval of, the Department **through a waiver request pursuant to N.J.S.A. 18A:35-18**. All students in an instructional program alternative receive [English as a second language] **an ESL class period each day in session**.

“Language instruction educational program” or “LIEP” means the program of services in which a ML receives instruction and support to develop and attain English language proficiency while meeting or exceeding the NJSLS in academic content areas. MLs in a LIEP develop proficiency in the English language while they develop skills and knowledge within the academic content areas. A LIEP includes the services that all MLs are entitled to receive, pursuant to N.J.S.A. 18A:35-16 and this chapter. LIEP includes “programs of bilingual education”, as pursuant to N.J.S.A. 18A:35-16, and “instructional alternative programs,” pursuant to N.J.S.A. 18A:35-18.

“Multicultural curriculum” means the same as that term is defined pursuant to N.J.A.C. 6A:7.

“Multilingual learner” or “ML” means a student whose primary language is not English, who is identified through the process set forth in this chapter, and who is developing proficiency in multiple languages (e.g., English and a primary language). The term is synonymous with “English learner” or “English language learner.”

[“Native language” means 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.]

“Newcomer” means any student born outside of the United States who has recently arrived in the United States. Newcomer is an umbrella term that includes a heterogenous group of immigrants;

some newcomers may also be MLs or students with interrupted formal education (SIFEs).

“NJSLS” means the New Jersey Student Learning Standards as defined [in] **at 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] **the same as that term is defined pursuant to N.J.A.C. 6A:32-2.1.**

“Primary language” means the language or mode of communication in which a ML is most fluent or speaks more regularly than any other language. In the case of a student, the primary language is the language normally used by the student’s parent.

[“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] **MLs.** Sheltered English classes are taught by [regular] classroom teachers who **deliver instruction in English, may not hold a bilingual/ESL endorsement, but** have received training on strategies **for instructional adaptation, pursuant to N.J.A.C. 6A:8-1.3,** to make [subject-area] **academic content areas** comprehensible for [ELLs] **MLs.**

“State Seal of Biliteracy” means a recognition awarded pursuant to N.J.A.C. 6A:8-5.3.

“Statewide home-language survey” or “Statewide HLS” means a standardized questionnaire developed by the Department for school districts to use to help identify which students are potential MLs and which students will require a record review and an ELP assessment to determine whether they are eligible for placement in a LIEP.

“Student with interrupted formal education” or “SIFE” means a ML in grades four to 12 who has experienced disruptions in their formal education that took place outside of the United States.

6A:15-1.3 Identification of eligible [English language] **multilingual** learners

- (a) The district board of education shall use, [a] **at the time of enrollment, the** multi-step process [at the time of enrollment] **set forth at (a)1 through (a)3 below** to [determine the native language of each ELL] **identify ML(s) enrolled in the school district.** [Each district board of education shall:
1. Maintain a census indicating all identified students whose native language is other than English; and]
 - [2.] **1. [Administer] Each district board of education shall administer to each student enrolled in the school district the Statewide home-language survey (HLS). The district board of education shall use the Statewide HLS to determine which students in [kindergarten] preschool to 12th grade [whose native] have a primary language(s) [is] other than English [must be screened further to determine English language proficiency] and, therefore, may be a ML. The Statewide [home-language survey] HLS shall be [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] completed in writing or by verbal interview by any individual with knowledge of the student, such as a parent(s), trained school district personnel, or a bilingual or ESL teacher;**
 2. **Following the administration of the Statewide HLS, the school district shall conduct a records review process to determine whether the student is a ML.**
 - i. **The records review process may include, but is not limited to, reviewing available information about the student’s overall academic**

performance from current or prior years, observations of teaching staff members who have worked with the student, interviews with the student or the student’s parent or family in their primary language, and/or additional school records as needed and in compliance with State and Federal student privacy laws; and

[(b)] **3.** The district board of education shall **then** determine the English language proficiency of all kindergarten to 12th-grade students who are [not screened out] **found eligible through (a)1 or (a)2 above** and whose [native] **primary** language is other than English by administering an English language proficiency [test] **assessment**, 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] **MLs**. Students who do not meet the [Department standard] **Department-established cut score** on [a] **the English** language proficiency [test] **assessment** and who have at least one other indicator shall be considered [ELLs] **MLs and shall be offered entry into the district board of education’s LIEP.**

i. Preschool students who are identified, pursuant to the processes set forth at (a)1 and (a)2 above, as having a primary language other than English shall be identified as MLs. Beginning in the July prior to the start of their kindergarten year, the district board of education shall administer an ELP assessment to preschool MLs to determine the ML’s English language proficiency level.

ii. The district board of education shall also use age-appropriate methodologies to identify preschool [ELLs] **MLs** to determine their individual language development needs.

- (b) **Each district board of education shall maintain a roster indicating all identified students whose primary language is other than English and who are MLs.**

6A:15-1.4 [Bilingual programs] **District board of education requirements, including LIEPs** for [English language] **multilingual** learners

- (a) The district board of education shall provide all [kindergarten] **preschool** to 12th-grade [ELLs] **MLs** enrolled in the school district pursuant to N.J.S.A. 18A:7F-46 **and 18A:7F-54** with **equal educational opportunities and all educational activities and programs, including** required courses and support services defined [in] **at (b) through [(h)] (e)** below to prepare [ELLs] **MLs** to meet **or exceed** the NJSLs for high school graduation. **The instructional opportunities shall be designed to assist MLs to fully comprehend all subject matter and demonstrate their mastery of all NJSLs academic content areas.**

1. [This] **Instructional opportunities** may also include [tutoring, after school programs, summer programs, and remedial services] **individualized and targeted supports**, as needed by [ELLs] **MLs**. [All district boards of education shall also provide appropriate instructional programs to eligible preschool ELLs based on need according to the New Jersey Preschool Program Implementation Guidelines, 2015. The guidelines provide developmentally appropriate recommendations for good practice and are intended for school districts that provide preschool programs.]
2. **The district board of education shall ensure that all educational services, activities, and programs incorporate a linguistically and culturally responsive, multicultural curriculum in accordance with N.J.S.A. 18A:35-4.35, 18A:35-4.36, and 18A:35-4.36a, to ensure educational equity aligned to the district board of education’s comprehensive equity plan, pursuant to N.J.A.C. 6A:7.**

[(b) The district board of education shall establish English language services designed to improve the English language proficiency of ELLs whenever there are at least one, but fewer than 10, ELLs enrolled in the school district. English language services shall be provided in addition to the regular school program.]

(b) The district board of education shall provide all MLs with a LIEP.

1. A district board of education shall provide appropriate instructional programs to preschool MLs pursuant to (b) below.

2. Whenever there are 20 or more MLs in kindergarten through 12th grade in any one language classification enrolled in the school district, a LIEP shall include bilingual education or dual language immersion programs pursuant to (e) below, unless waived pursuant to N.J.S.A. 6A:15-1.15.

3. Whenever there are 10 or more MLs in kindergarten through 12th grade enrolled in the school district, an ESL program shall be provided.

4. Whenever there are at least one but fewer than 10 MLs in kindergarten through 12th grade enrolled in a school district, the district board of education shall provide the MLs English language services. English language services shall be provided in addition to the regular school program.

5. Instructional alternative programs may be implemented pursuant to N.J.A.C. 6A:15-1.15.

(c) All district boards of education shall provide appropriate instructional programs to eligible preschool MLs based on the New Jersey Preschool Program Implementation Guidelines and the New Jersey Preschool Teaching and Learning Standards of Quality, pursuant to N.J.A.C. 6A:13A, Elements of High-Quality Preschool Programs.

1. A program that meets the New Jersey Preschool Teaching and Learning Standards of Quality and is approved pursuant to N.J.A.C. 6A:13A will be considered a preschool LIEP.

[(c) The district board of education shall establish an ESL program that provides at least one period of ESL instruction based on student language proficiency whenever there are 10 or more ELLs enrolled in the school district.

1. An ESL curriculum that addresses the WIDA English language development standards shall be developed and adopted by the district board of education to address the instructional needs of ELLs.
2. The ESL curriculum shall be cross referenced to the school district's bilingual education and content area curricula to ensure that ESL instruction is correlated to all content areas taught.]

(d) The district board of education shall establish bilingual education **or dual language immersion** programs whenever there are 20 or more [ELLs] **MLs** in any one language classification enrolled in the school district **in kindergarten through 12th grades**, pursuant to N.J.S.A. 18A:35-18. Bilingual education **or dual language immersion** programs shall:

1. Be designed to prepare [ELLs] **MLs** to acquire sufficient English **knowledge and skills** [and content knowledge] to meet the NJSLs. All [ELLs] **MLs** participating in bilingual and **dual language immersion** programs shall also receive **a class period of ESL instruction each day in session;**
2. Include a curriculum that addresses the NJSLs, the [WIDA English language development] **ELD** standards, and the use of two languages. The bilingual education curriculum shall [be adopted by the district board of education] **primary language instruction delivered to further master literacy in the primary language and as a support in the development of English proficiency;** and
3. Include the full range of required courses and activities offered on the same basis and under the same rules that apply to all students within the school district[.]; **and**

4. Utilize a bilingual education curriculum that is adopted by the district board of education.

[(e) ELLs shall be provided with equitable instructional opportunities to participate in all non-academic courses necessary to meet the NJSLS, including comprehensive health and physical education, the visual and performing arts, and career awareness programs. The instructional opportunities shall be designed to assist ELLs to fully comprehend all subject matter and demonstrate their mastery of content matter.]

(e) The district board of education shall provide at least one class period of ESL instruction each day in session based on a student's English language level to all MLs placed in a LIEP.

1. The district board of education shall develop and adopt an ESL curriculum that addresses the ELD standards to address the instructional needs of MLs.

2. The ESL curriculum shall be cross referenced to the school district's bilingual education and academic content area curricula to ensure that ESL instruction is correlated to all academic content areas taught.

(f) A district board of education may establish dual language immersion programs to meet the requirement at (a)4ii above and N.J.S.A. 18A:35-15 through 18A:35-26.

1. Dual language immersion programs shall be designed to help students achieve proficiency in English and in a second language while mastering academic content area skills.

2. Instruction shall be in all courses or subjects of study that allow students to meet all grade promotion and graduation standards.

3. Classes in dual language immersion programs shall be comprised of at least 50 percent MLs.

4. The program may be coordinated with the school district's world languages program.

5. **Dual language immersion programs that are not established to provide the LIEP services required pursuant to N.J.S.A. 18A:35-15 through 18A:35-26 do not have to comply with the chapter's requirements.**

(g) **A district board of education may establish a newcomer program for a limited duration in time to address the needs of recent immigrant students, particularly SIFEs, before the students transition to a general education classroom. A high-quality newcomer program shall:**

1. **Be age-appropriate;**
2. **Include content that relates to the NJSLs;**
3. **Include social-emotional learning; and**
4. **Include courses that are credit-bearing and count toward graduation pursuant to N.J.A.C. 6A:8, or promotion requirements to allow students to meet grade-level standards within a reasonable period of time.**

[(f)] (h) The district board of education shall offer sufficient courses and other relevant supplemental instructional opportunities in grades nine through 12 to enable [ELLs] **MLs** to meet **or exceed** the NJSLs for graduation. When sufficient numbers of students are not available to form a bilingual class in [a subject] **an academic content** area, the district board of education shall develop, [plans] in consultation with and approved by the Department, **plans** to meet the needs of the students.

[(g)] (i) In addition to (a) through [(f)] (g) above, the district board of education shall design additional programs and services to meet the special needs of eligible [ELLs and] **MLs. The additional programs and services shall** include, but not be limited to, [remedial instruction] **individualized and targeted supports** through Title I programs; special education; [school-to-work programs; computer training; and] **career and technical education programs;** gifted and talented education services; **supports to help**

MLs earn a State Seal of Biliteracy pursuant to N.J.A.C. 6A:8-5.3; and individualized learning opportunities pursuant to N.J.A.C. 6A:8-5.1.

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

[(i) **(j)** The district board of education may establish a program in bilingual education **or dual language immersion** for any language classification with fewer than 20 [pupils] **students.**

(k) The district board of education may develop and adopt a policy that sets forth how MLs may meet the world language or ELA course graduation requirements, pursuant to N.J.A.C. 6A:8-5.1, by applying credits earned in an ESL course.

1. If a district board of education's policy allows students to apply ESL coursework toward their ELA course requirements, the applicable ESL coursework shall be aligned to grade-level NJSLs for ELA.

[6A:15-1.5 Waiver process provided by statute]

[(a) A school district may request a waiver from N.J.A.C. 6A:15-1.4(d) to establish annually an instructional program alternative with the approval of the Department when there are 20 or more students eligible for the bilingual education program in grades kindergarten through 12, and the school district is able to demonstrate that it would be impractical to

provide a full-time bilingual program due to the age range, grade span, and/or geographic location of eligible students.

1. Instructional program alternatives shall be developed in consultation with and approved annually by the Department after review of student enrollment and achievement data. All bilingual instructional program alternatives shall be designed to assist ELLs to develop sufficient English skills and subject-matter skills to meet the NJSLS.
2. The instructional program alternatives that shall be established include, but are not limited to: the bilingual part-time component; the bilingual resource program; the bilingual tutorial program; the sheltered English instruction program; and the high-intensity ESL program.
3. District boards of education implementing program alternatives annually shall submit student enrollment and achievement data that demonstrate the continued need for the programs.]

6A:15-[1.6]1.5 Approval procedures

- (a) Each school district providing a [bilingual program, ESL program, or English language services] LIEP shall submit a plan every three years to the Department [of Education] for approval. [At its discretion, the Department may request modifications, as appropriate.]
- (b) **A district board of education's LIEP plan shall demonstrate that:**
 1. **For kindergarten through 12th grade, LIEP curricula include or are aligned with:**
 - i. **The NJSLS;**
 - ii. **The ELD standards; and**
 - iii. **A multicultural curriculum, pursuant N.J.S.A. 18A:35-4.36a and N.J.A.C. 6A:7.**
 2. **For preschool, the ML instruction and support meets the language instruction requirements in the New Jersey Preschool Program**

Implementation Guidelines and the New Jersey Preschool Teaching and Learning Standards of Quality, pursuant to N.J.A.C. 6A:13A and the curricula include or are aligned with:

- i. The NJSLS;**
 - ii. The Early Language Development Standards for preschool; and**
 - iii. A multicultural curriculum, pursuant N.J.S.A. 18A:35-4.36a and N.J.A.C. 6A:7.**
- 3. MLs have equitable access to educational activities and programs in a manner aligned to the district board of education’s comprehensive equity plan, pursuant to N.J.A.C. 6A:7.**
 - 4. School district staff engage in ongoing and continuous program evaluation that shall include regular reviews of student performance data (for example, graduation rates and assessment results) and other measures (for example, absenteeism, disciplinary records, and course enrollment) to evaluate whether MLs in the school district have equitable access to educational opportunities, including, but not limited to, gifted and talented programs, advanced coursework and dual enrollment, work-based learning opportunities, extra-curricular activities, and career counseling;**
 - 5. Preschool students participate in instructional activities pursuant to N.J.A.C. 6A:13A.**
 - 6. Bilingual and dual language immersion programs promote bilingualism, biliteracy, cross-cultural competency, high levels of academic achievement in both languages, and a path, if available, toward attaining the State Seal of Biliteracy.**

[1.] (c) [Plans submitted by each] **The district board of education LIEP plan submitted to the**

Department for approval shall include information on the following:

[i.] **1. Identification of [students] MLs in preschool to grade 12.**

[ii.] **2. [Program] LIEP description;**

- [iii.] **3.** The number of [certified] staff hired for the [program] **LIEP by certificate type;**
- [iv.] **4.** Bilingual and ESL curriculum [development];
- [v.] **5.** Evaluation design;
- [vi.] **6.** Review process for **a student's exit from ML status;** and
- [vii.] **7.** A budget for **all components of** the [bilingual and ESL program or English language services] **LIEP.**

(d) The Department will review the plan to ensure that the district board of education has a system of support for all MLs that is aligned to this chapter. The Department may request modifications of the plan, as appropriate, and shall determine whether to approve the district board of education's plan.

[(b)] (e) The Department will establish procedures for monitoring and evaluation of **the school district's** [bilingual/ESL programs by means of its district and school accountability process] **LIEP.**

6A:15-[1.7]**1.6** Supportive services

- (a) Students enrolled in [bilingual, ESL, and English language services programs] **a LIEP** shall have **equal educational opportunities, including** full access to educational **opportunities and** services available to other students in the school district.
- (b) [To the extent that is administratively feasible,] **A school district shall provide MLs with linguistically and culturally responsive** supportive services [to ELLs], such as **academic** counseling, tutoring, [and] career guidance, [should be provided by bilingual] **and mental health counseling. Bilingual** personnel who are **trained in social-emotional learning and are** familiar with and knowledgeable [of] **about** the unique **assets and** needs [and background] of the [ELLs] **MLs, including newcomers and SIFEs,** and their parents, **shall provide the services.**

6A:15-[1.8]1.7 [Inservice training] **Professional development**

- (a) [The] **As part of the professional development requirements at N.J.A.C. 6A:9C, the** district board of education shall develop a **professional development** plan [for inservice training] for bilingual, ESL, and [mainstream] **academic content** teachers **whose classroom instruction is in English**; administrators who supervise bilingual/ESL programs; and administrators and any personnel who observe and evaluate teachers of [ELLs] **MLs**.
- (b) The **district board of education’s professional development** plan shall: [include]
1. **Include** instructional **adaptational** strategies, **pursuant to N.J.A.C. 6A:8-3.1,** and **training on** appropriate assessments to help [ELLs] **MLs** meet the NJSLs and the [WIDA English language development] **ELD** standards[.]; [All bilingual and ESL teachers shall receive training in the use of the ESL curriculum.]
- [(b)] 2. [The Professional Development Plan of the school district shall include] **Address** the needs of bilingual and ESL teachers, [which] **who** shall [be addressed through inservice] **receive training[.] in the use of the ESL curriculum and the ELD standards; and**
3. **Ensure all teachers receive training on the ELD standards and how to provide linguistically and culturally accessible instruction and appropriate modifications and accommodations for MLs.**

6A:15-[1.9]1.8 Certification

- (a) All teachers of bilingual [classes] **programs** shall hold a valid New Jersey instructional certificate with an endorsement for the appropriate grade level and/or **academic** content area[, as well as an endorsement in] **and a standard certificate with a** bilingual/**bicultural** education **endorsement**, pursuant to N.J.S.A. 18A:6-38 et seq. and 18A:35-15 to 26 **and N.J.A.C. 6A:9B-11.5.**

- (b) **All teachers of dual language immersion programs shall:**
1. **Hold a valid New Jersey instructional certificate with an endorsement for the appropriate grade level and/or academic content area and an endorsement in bilingual/bicultural education or world languages;**
 2. **Demonstrate fluency in the language of their instruction, pursuant to N.J.A.C. 6A:9B-11.5; and**
 3. **Teach in the academic content area authorized by the endorsement to their instructional certificate.**

[(b)] (c) All teachers of ESL classes shall hold a valid New Jersey **instructional** certificate [in] **with an ESL endorsement**, pursuant to N.J.S.A. 18A:6-38 et seq. and N.J.A.C. 6A:9B-[10.5]**11.6**.

[(c)] (d) All teachers providing English language services shall hold a valid New Jersey instructional certificate.

(e) **All instructional support staff who provide bilingual instructional support services in preschool through grade 12 shall hold a bilingual language paraprofessional credential, pursuant to N.J.A.C. 6A:9B-14.22.**

6A:15-[1.10]**1.9** [Bilingual, English as a second language, and English language services program enrollment] **LIEP** placement, assessment, exit, and reentry

(a) All [ELLs] **MLs** from kindergarten through grade 12 shall be enrolled in [the bilingual, ESL, or English language services education program] **a LIEP** established by the [school] district board of education [as prescribed] in **accordance with** N.J.A.C. 6A:15-1.4(b) through [(e)] **(f)** and [1.5(a)] **1.15(a)**, and P.L. 1995, c. 59 and c. 327.

(b) Students [enrolled in the bilingual, ESL, or English language services program] **identified as MLs** shall be assessed annually using **a Department-approved ELP** assessments to determine their progress in achieving English language proficiency goals

and readiness for exiting the [program] **LIEP**. 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] **A ML** enrolled in the [bilingual, ESL, or English language services program] **LIEP** shall be placed in [a monolingual] **a classroom(s) where the primary language of instruction is English** [program] when [they have] **the ML has** demonstrated readiness to exit a [bilingual, ESL, or ELS program through] **LIEP first by achieving the** Department-established [criteria] **cut score** on an ELP **or alternate ELP** assessment [and a Department-established English language observation form]. [A student shall first achieve the Department-established English proficiency standard as measured by an ELP assessment.] The student's readiness shall be further assessed by the use of a Department-established English language observation form that considers, at a minimum: classroom performance; the student's reading level in English; the [judgment] **observations** of the teaching staff members [or members] responsible for the educational program of the student; and performance on achievement tests in English.

1. Pursuant to 34 CFR 200.6(h)(4)(ii), [an ELL] **a ML** 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] **ML** status based on the [student's] **student meeting the Department-determined cut** score on the remaining domains in which the student was assessed.

- (d) **When the review process for exiting a student from a LIEP has been completed, the district board of education shall notify, by written communication, the student's parent of the placement determination. If the parent or a teaching staff member disagrees with the student's placement, the parent or teaching staff member 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.

[(d)] (e) A parent [or guardian] may remove a student who is enrolled in a [bilingual education program] **LIEP** pursuant to [provisions in P.L. 1995 c. 327] **N.J.S.A. 18A:35-22.1.**

1. A student who is identified as a **ML** and whose parent refuses placement in a **LIEP** shall still access and meet the academic expectations of the **NJSLS.**

Pursuant to N.J.A.C. 6A:8 and 6A:15-1.6., a district board of education shall ensure that students whose parents refuse placement are provided the appropriate instructional adaptations and appropriate assessment modifications and accommodations for Statewide assessments.

(f) **The district board of education shall monitor, for a minimum of two years, the academic progress of students who are exited from a LIEP to ensure that the students are continually meeting or exceeding the NJSLS when the curriculum and instruction are delivered in English.**

[(e)] (g) Newly exited students who are not **academically** progressing in [the mainstream] **classes where English [program] is the primary language of instruction** may be considered for reentry to [bilingual and ESL programs] **a LIEP** as follows:

1. After a minimum of one-half an academic year and within two years of exit, the [mainstream English classroom] teacher **delivering instruction in English** 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] **classes where English is the primary language of instruction.**

3. The recommendation for retesting shall be based on the teacher's [judgment] **documented observation of a student's academic performance and data-based determination** that the student is experiencing difficulties due to problems

in using **the** English [as evidenced by the student's inability to:] **language 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] **English** language proficiency [test] **assessment** than the one used to exit the student **from the LIEP**.
5. If the student scores below the [State-established standard] **Department-determined cut score** on the **English** language proficiency [test] **assessment**, the student shall be reenrolled into [the bilingual or ESL program] **a LIEP**.

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

6A:15-[1.11]**1.10** Graduation requirements for [English language] **multilingual** learners

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

6A:15-[1.12]**1.11** Location

(a) All [bilingual, ESL, and English language services programs] **kindergarten through grade 12 LIEPs** shall be conducted within classrooms within the [regular school buildings of the] school district pursuant to N.J.S.A. 18A:35-20[.], **except under the following circumstances:**

1. **A LIEP is conducted in another school district as part of a joint program,**

pursuant to N.J.A.C. 6A:15-1.13; or

2. **A ML's individualized learning opportunity, pursuant to N.J.A.C. 6A:8-5.1(a)2, occurs outside of the school district's classrooms.**

6A:15-[1.13]1.12 Notification

(a) Each district board of education shall notify, by [mail] **written communication**, the parent[s] of [ELLs] **a ML** of the fact that their child has been identified as eligible for [enrollment] **placement** in a [bilingual, ESL, or English language services education program] **LIEP**.

1. The district board of education shall issue the notification within 30 **calendar** days of the [child's identification] **start of the school year**. [Notice shall include a statement that the parents may decline their child's enrollment in a bilingual program, and they shall be given an opportunity to do so if they choose.]
2. **For a student who enrolls after the beginning of the school year, the district board of education shall issue the notification within 14 calendar days of the student being placed in a LIEP.**

(b) The notice shall be in writing and in the language in which the parent[(s)] possesses a primary speaking ability, and in English, and shall include the following information:

1. Why the student was identified as [an ELL] **a ML**;
2. Why the school **district determined that the** student needs to be placed in a [language instructional educational program] **LIEP** that will help [him or her] **the student** develop and attain English proficiency and meet the NJSLs;
3. The student's level of English **language** proficiency, how the level of English **language** proficiency was assessed, and the student's **performance in** academic [level] **content areas**;

4. The method of instruction the school district will use to serve the student, including a description of other instruction methods available and how those methods differ in content, instructional goals, and the use of English and a [native] **primary** language, if applicable;
 5. How the program will meet the student's specific needs in attaining English **language proficiency** and meeting [State standards] **or exceeding the NJSLs**;
 6. The program's exit requirements, the expected [rate of transition into a classroom not tailored for ELLs] **amount of time that the ML will need to successfully achieve in classrooms where the language of instruction is English**, and, in the case of high school students, the expected rate of graduation; [and]
 7. How the [instructional program] **LIEP** will meet the objectives of the individualized education program of a student with a disability[.]; **and**
 8. **A statement that the parent may decline the child's enrollment in a LIEP, and that the parent shall be given an opportunity to do so or to select a different type of LIEP service available at the child's school.**
- (c) Each district board of education shall send progress reports to [parent(s)] **the parents** of students enrolled in [bilingual, ESL, or English language services programs] **a LIEP** in the same manner and frequency as progress reports are sent to parent[(s)] of other students enrolled in the school district.
- (d) Progress reports shall be written in English and in the [native] **primary** language [of] **spoken by the** parent[(s)] of students enrolled in the [bilingual and ESL program unless the board of education can demonstrate and document in the three-year plan required in N.J.A.C. 6A:15-1.6(a) that the requirement would place an unreasonable burden on the district board of education] **LIEP**.
- (e) Each district board of education shall notify the parent[(s)] when **the** student[s] meets the exit criteria and [are] **is** placed in a monolingual English program. The notice shall be in

English and in the language in which the parent[(s)] possesses a primary speaking ability.

6A:15-[1.14]**1.13** Joint programs

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

1. **A LIEP; and**

2. **An individualized learning opportunity, pursuant to N.J.A.C. 6A:8-5.1(a)2, to a ML who chooses to utilize it to meet the 120-credit graduation requirement, in whole or in part.**

6A:15-[1.15]**1.14** Parental [involvement] **and family engagement**

(a) Each district board of education shall provide for the maximum practicable [involvement] **engagement** of parent[(s)] of [ELLs] **MLs** 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] **LIEP**.

(b) [Each] **With the exception of a district board of education implementing an English language services or ESL program, each** district board of education implementing a [bilingual education program] **LIEP** shall establish a parent advisory committee on bilingual education of which the majority membership shall be parent[(s)] of [ELLs] **MLs**.

6A:15-1.15 Waiver process provided by statute

(a) **A school district that has 20 or more students eligible for the bilingual education program in kindergarten through grade 12 may request annual approval from the Department to waive the requirement at N.J.A.C. 6A:15-1.4(d) and, instead, to establish an instructional program alternative if the school district is able to**

demonstrate that it would be impractical to provide a full-time bilingual program due to the age range, grade span, and/or geographic location of eligible students.

- 1. Instructional program alternatives shall include, but are not limited to: the bilingual part-time program; the bilingual resource program; the bilingual tutorial program; the sheltered English instruction program; and the high-intensity ESL program.**
- 2. All instructional program alternatives shall be designed to assist MLs to develop English language proficiency while learning the knowledge and skills for academic content areas to meet or exceed the NJSLs.**
- 3. Instructional program alternatives shall be developed in consultation with the Department based on student enrollment and achievement data.**
- 4. A district board of education implementing instructional program alternatives annually shall submit to the Department student enrollment and achievement data that demonstrate the continued need for the programs.**
- 5. Instructional program alternatives shall be approved annually by the Department based on the Department's review of student enrollment and achievement data.**

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

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