

## **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 adoption level 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 January 11, 2022, meeting of the State Board of Education when the rulemaking was considered at Proposal Level.

**Topic:** Bilingual Education                      **Meeting Date:** July 12, 2023  
**Code Citation:** N.J.A.C. 6A:15                      **Level:** Adoption  
**Division:** Educational Services                      **Completed by:** Division of Educational Services

**Summary of Comments and Agency Responses:**

The following is a summary of the comments received from the 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
- 1. Dr. JoAnne M. Negrin, Supervisor of English as a Second Language (ESL), World Languages, Bilingual Education, and Performing Arts, Vineland School District
- 2. Julie Mitschow, Nutley School District
- 3. Sarah Jung, ESL teacher, Norwood School District
- 4. Nina Peckman, Staff attorney, Advocates for Children of New Jersey
- 5. Erin Sweeney, Esq., Equal Justice Works Fellow, and Cindy Lio, State and Local Policy Director, Kids in Need of Defense
- 6. Jesse Burns, Executive Director, Dr. Rozella G. Clyde, and Deborah Lee, League of Women Voters of New Jersey Education Committee
- 7. Ashley Warren, Ed.D., Vice President of Membership, Foreign Language Educators of New Jersey
- 8. Frank Angiola, ESL teacher, Hillcrest School District
- 9. Dr. Kimberly Tew, Assistant Superintendent of Curriculum and Instruction, Princeton School District
- 10. Dineen Gruchaz, Principal, Community Park School
- 11. Sheba Koshy, ESL teacher
- 12. Jacob Bailey, Fourth grade teacher, Village Elementary School
- 13. Odenis Goris, Dual language immersion elementary teacher
- 14. Kay Li

15. María José Spender, Spanish kindergarten dual language immersion teacher, West Windsor-Plainsboro Regional School District
16. Helen Kelmanovich, Spanish kindergarten dual language immersion teacher, West Windsor-Plainsboro Regional School District
17. Lilia Ruffo, Spanish first grade paraprofessional dual language immersion, West Windsor-Plainsboro Regional School District
18. Ashley Warren, Ed.D., Supervisor of World Languages, Dual Language Immersion, and English Language Learning, West Windsor-Plainsboro Regional School District
19. Joseph Grillo, Parent
20. Stacy Burke, ESL teacher, Maurice Hawk Elementary School
21. Nora Tang
22. Marla Fruhling, Third grade teacher, West Windsor-Plainsboro Regional School District
23. Jean Public
24. Debra J. Bradley, Esq., Director of Government Relations, New Jersey Principals and Supervisors Association
25. Robert F. Johnson, Director of Special Education, Middle Township School District
26. Katherine Stotler, Supervisor of World Language and English Language Learners, Bernards Township School District
27. Michele Schreiner, Supervisor of English Language Learning and World Languages, Egg Harbor Township School District
28. Jonathan Pushman, Director, Governmental Relations, New Jersey School Boards Association
29. Laura Arredondo, Supervisor, World Languages and English Language Learner Programs, Hunterdon Central Regional High School
30. Kathleen Fernandez, Executive Director, New Jersey Teachers of English to Speakers of Other Languages/New Jersey Bilingual Educators (NJTESOL/NJBE), Lady Jimenez Torres, New Jersey Consortium for Immigrant Children, and Elizabeth Athos and Jessica Levin, Education Law Center

**1. Comment:** The commenter expressed concern about inadequate translation and asked how the Department plans to address this concern, so the result is increased family engagement with school districts. **(A)**

**Response:** The Department recognizes that evidence-based research demonstrates that families can engage more when they receive information and communication in a way they can understand. Increased family engagement is also linked to increased academic performance in students. The proposed amendments at N.J.A.C. 6A:15-1.14 represent a non-exhaustive list of documents and communication that must be translated to increase

communication, engagement, and partnership with families.

2. **Comment:** The commenter asked whether the Department was able to incorporate most of the requests from the education community regarding the list of documents that must be translated. **(A)**  
**Response:** The Department has included a non-exhaustive list of documents at N.J.A.C. 6A:15-1.14.
3. **Comment:** The commenter asked whether there would be an opportunity to make changes to the proposed rulemaking based on comments received during public testimony. **(A)**  
**Response:** In accordance with the Administrative Procedure Act, the Department collected and considered all stakeholder comments through the end of the 60-day comment period, which closed on April 22, 2023. The Department has recommended changes at adoption level when the Department agreed with commenter and the requested change(s) would not substantially alter the proposal. Additionally, the Department is committed to supporting school districts when implementing these regulations with fidelity and to best support New Jersey’s multilingual learners (MLs). Therefore, the Department will consider the comments received during the rulemaking process when developing the supplemental guidance that will be provided to school districts following the adoption of the chapter, as proposed for amendment.
4. **Comment:** The commenter stated that the Department should provide Statewide translation and interpretation services. The commenter also remarked that the Department’s stated commitment to ensuring that school districts and families are provided with information and communications in multiple languages and an accessible form is not being realized across the State. The commenter stated that there is an urgent issue of lack of compliance with Federal law and guidance, as well as existing State requirements. The commenter also stated that many school districts are not providing quality interpretation or translation services, except for special education testing. The commenter further stated that this crucial work must start with a clear requirement at N.J.A.C. 6A:15 that all information brought to the attention of English-speaking parents by the Department and school districts must also be provided to parents who do not speak English as their primary language. **(6)**  
**Response:** The Department agrees that essential information and communication from school districts must be available in the language in which the parent possesses a primary speaking ability. Such communication is critical to achieve meaningful family engagement. The proposed amendments at N.J.A.C. 6A:15-1.1(c) will ensure that the Department provides culturally and linguistically responsive technical assistance to each school district in the implementation of language instruction educational programs (LIEPs). Additionally, MLs’ parents are also entitled, pursuant to Titles I and III of the Every Student Succeeds Act (ESSA) and the Individuals with Disabilities Education Act (IDEA), to translation and interpretation of particular information. Therefore, the Department proposed new N.J.A.C. 6A:15-1.14(a)1 to include a non-exhaustive list of parent communications that school districts must provide in the language in which the parent possesses a primary speaking ability. The allocation of resources for the Department to provide Statewide translation resources is outside the scope of this rulemaking.
5. **Comment:** The commenters applauded the State’s efforts to ensure that MLs are viewed with an asset-based lens. **(1, 6, and 24)**  
**Response:** The Department thanks the commenters for the support.
6. **Comment:** The commenter stated that many of the proposed amendments at N.J.A.C. 6A:15

demonstrate progress but expressed concern regarding the practical application and impact of the proposed amendments. The commenter also stated that several of the proposed amendments, although well-intended, in reality serve to concentrate the deficit lens through which the students are viewed. (1)

**Response:** The Department recognizes that the proposed amendments at N.J.A.C. 6A:15 are a critical first step in shifting to asset-based instruction. The Department intends to complement the proposed policy changes with guidance materials to ensure that the implementation of the proposed amendments is equitable for the learning needs of MLs, while providing school districts the flexibility to meet the chapter's requirements. The Department will seek feedback from the State Advisory Board on Bilingual Education regarding any materials that are developed as guidance to accompany the proposed amendments to this chapter.

7. **Comment:** The commenter stated that the Department and school districts should establish a pathway where families can register complaints regarding issues that impact MLs, comparable to the process that exists for special education. The commenter also stated that the Department has not proposed any amendment to implement this crucial recommendation even though it is contained in Federal guidance. The commenter further stated that N.J.A.C. 6A:15 cannot truly protect the rights of MLs and their families if a complaint process is not captured in the chapter. The commenter stated that changes are essential to align N.J.A.C. 6A:15 with existing legal requirements and to rectify long-standing inequities in the education of New Jersey's MLs. (6)

**Response:** The procedural requirements for special education that the commenter cited are Federally mandated for students with disabilities, pursuant to 20 U.S.C. § 1415. MLs and their families have the right to submit complaints through the Federal and State complaint processes pursuant to the ESSA. The [Title III webpage](#) of the Department's website explains the parental and student rights. In lieu of adding an additional complaint process, the Department remains committed to ensuring that all MLs and their families receive the services that are required by law and necessary for MLs to thrive in school. To ensure that school districts comply with the requirements at N.J.A.C. 6A:15, the Department monitors all school district programs through the New Jersey Quality Single Accountability Continuum (NJQSAC) process, adheres to the procedures required pursuant to the ESSA, and conducts a review of each school district's LIEP plan when it is submitted every three years.

8. **Comment:** The commenter requested a mechanism be made available for complaints registered with the Department regarding LIEPs that are not implemented with high-quality, like the complaint mechanism at N.J.A.C. 6A:14 for students with disabilities. The commenter stated the importance of a complaint mechanism is because parents of MLs are much less likely to advocate for their children's rights in the school system, and, if necessary, in the courts, than parents of other student populations. (1)

**Response:** MLs and their families have the right to submit complaints through the Federal and State complaint process pursuant to ESSA. The [Title III webpage](#) of the Department's website explains the parental and student rights, the complaint procedure, and appeals process.

In addition, the Department oversees all schools and programs through the NJQSAC, the Department's requirements under the ESSA, and its review of each district board of education's LIEP plan when it is submitted every three years.

9. **Comment:** The commenter stated that full-time bilingual education is defined at N.J.A.C. 6A:15-1.2 as a full-time LIEP in all courses or subjects. The commenter also

stated that a part-time bilingual program is defined as an instructional program alternative in which students receive core instruction in English language arts (ELA) and mathematics with a certified bilingual teacher. The commenter further stated that many full-time bilingual programs, including programs that are recognized by the Department as instructional models for other school districts, are not designed so all courses or subjects are taught by a certified bilingual teacher. The commenter questioned whether school districts would need an elementary music teacher with a bilingual endorsement or a teacher with a bilingual endorsement for a secondary elective. **(1)**

**Response:** The Department thanks the commenter for the input. School districts do not need a teacher with a bilingual/bicultural endorsement for classes such as music. N.J.S.A. 18A:35-20 requires students with limited English-speaking ability to participate fully with English-speaking pupils in the regular classes for courses or subjects in which verbalization is not essential to understanding the subject matter, including, but not limited to, art, music, and physical education.

10. **Comment:** The commenter stated that the definition at N.J.A.C. 6A:15-1.2 of “bilingual resource program” is unclear. **(1)**

**Response:** The Department disagrees with the commenter because the definition specifies that students receive daily instruction from a teacher with a bilingual/bicultural endorsement. The Department will issue guidance related to this chapter’s proposed amendments to illustrate for school districts how this program design can be implemented with fidelity. A bilingual resource program is an alternative program that can only be implemented through the waiver process at N.J.A.C. 6A:15-1.15; therefore, any school district seeking to implement an instructional program alternative will have to secure the Department’s approval.

11. **Comment:** The commenter asked whether proposed amendments at N.J.A.C. 6A:15-1.2 to the definition of “dual language immersion program,” which is a full-time LIEP for the purposes of this chapter, necessitate modification of a successful dual language immersion program that is delivered as a one-way program in which the majority of the students have the same primary language and they are together learning a new partner language. The commenter stated that the proposed amendments are very specific about what a dual language program looks like and its student makeup. The commenter stated that one-way dual language immersion programs are not mentioned in the chapter and, therefore, could be interpreted as being discouraged or not permitted. **(1)**

**Response:** If the program is not designed to meet the chapter’s full-time LIEP requirement, then program modifications are not needed as a result of N.J.A.C. 6A:15-1.2 and the rest of this chapter. Rather than discourage the implementation of dual language immersion programs, the proposed amendments elevate a dual language immersion program as a viable option to meet the chapter’s requirements. The proposed requirements for a dual language immersion program are parallel to a bilingual education program, as such programs meet the requirements of a full-time LIEP. The proposed amendments at N.J.A.C. 6A:15-1.2 to the definition of “dual language immersion program” will create a program design that will enable MLs to maintain their primary language and enhance their literacy in it while acquiring English. The Department acknowledges there are model dual language immersion programs throughout the State, including programs in which a majority of the students are native English speakers. Dual language immersion programs that are not designed to meet the chapter’s LIEP requirements fall outside the scope of this rulemaking.

12. **Comment:** The commenter expressed support for dual language education. The

commenter stated that studies have shown that bilingual students are more empathetic and are able to pick up on social cues and that dual language immersion students outperform their peers in English proficiency by a full year. The commenter also stated that dual language immersion programs are proven to be beneficial to students of all backgrounds and proficiencies in the target language and in English. The commenter further stated that bilingual education at a young age has proven to be beneficial to a child's development, both socially and academically. The commenter stated that the research findings were crucial in deciding to enroll the commenter's child in a dual language immersion program. (19)

**Response:** The Department agrees with the commenter that dual language immersion programs are a valuable program design for all students.

13. **Comment:** The commenters suggested that the definition of “dual language immersion program” at N.J.A.C. 6A:15-1.2 be replaced with the following: “‘Dual language immersion’ refers to programs that provide literacy and content instruction to all students through two languages and that promotes bilingualism and biliteracy, grade-level academic achievement, and sociocultural competence. In a dual language immersion program, teachers provide daily instruction in English and a minimum of 50 percent of instruction in the partner language. Dual language programs can be either ‘one-way’ or ‘two-way’ depending on the program model and student population. One-way dual language programs serve students who are mostly proficient in their primary language but not in English at the time of enrollment or who are mostly monolingual/dominant in English at the time of enrollment. Two-way programs include approximately equal numbers of students who, at the time of enrollment, are monolingual/dominant in English and are monolingual/dominant in the partner language. The programs may also serve students who have proficiency in both languages at the time of enrollment.”

The commenters stated that, by adopting the suggested definition, the Department would be acknowledging the variety of dual language immersion programs that exist within New Jersey and globally. The commenters also stated that the Department's proposed amendments to the definition for “dual language immersion program” do not reference one-way dual language immersion programs, which the commenters stated are shown to be powerful and effective language programs for MLs and monolingual learners. The commenters indicated that they drafted the recommended definition after considering relevant research. (7, 9, 10, 14, 15, 16, 17, 18, 21, and 22)

**Response:** The Department appreciates the commenters' suggestion regarding the definition of “dual language immersion programs,” but disagrees that the suggested changes are necessary. The existing definition, as proposed for amendment, applies to dual language immersion programs that meet the requirements at N.J.S.A. 18A:35-15 for bilingual education in New Jersey for MLs only.

The Department's proposed amendments to the definition of “bilingual education” at N.J.A.C. 6A:15-1.2 will enable MLs to maintain their primary language and enhance their literacy in it while acquiring English. This is similar to a one-way bilingual program, which has the goals of bilingualism, biliteracy, and biculturalism. One-way programs for monolingual English speakers are outside of the scope of this chapter, which sets forth requirements related to only MLs. MLs are students whose primary language is not English, who are identified through the process set forth in this chapter, and who are developing proficiency in multiple languages (for example, English and a primary language).

14. **Comment:** The commenters suggested that the definition of “dual language immersion program” be changed to replace “classes in dual language immersion programs shall be

comprised of at least 50 percent MLs” with “classes in two-way dual language immersion programs shall be comprised of approximately 50 percent MLs.” The commenters stated that a mandatory minimum does not apply to one-way programs and that the Department’s proposed amendments will create unnecessary challenge for two-way dual language immersion programs. (7, 9, 10, 12, 15, 16, 17, 18, 19, 21, and 22)

**Response:** The Department disagrees with the suggested change to the definition of “dual language immersion programs.” The existing definition, as proposed for amendment, does not impact one-way programs for monolingual English learners or for school districts that choose to implement one- or two-way dual language immersion programs that are designed for instructional best practice and not for meeting the chapter’s requirements, including LIEPs, for MLs.

15. **Comment:** The commenter opposed the amendments at N.J.A.C. 6A:15, in particular, provisions related to dual language immersion programs. The commenter stated that the proposed amendments will be detrimental to dual language immersion programs across the State. (13)

**Response:** The Department disagrees. The definition of “dual language immersion program” at N.J.A.C. 6A:15-1.2, as proposed for amendment, will not impact existing one- or two-way dual language immersion programs that are designed for students whose primary language is English. The definition sets forth the requirements for a school district to meet the bilingual education requirements for MLs at N.J.S.A. 18A:35-15.

16. **Comment:** The commenter asked the Department to reconsider the proposed amendments at N.J.A.C. 6A:15 and to provide flexibility in the chapter’s provisions, such as removing the requirement of a minimum of 50 percent of instruction in the primary language of MLs enrolled. The commenter asked the Department to not dismantle one-way dual language immersion programs, which provide the necessary freedom for educators to tailor a curriculum appropriate for each student’s needs. (19)

**Response:** The definition of “dual language immersion program” at N.J.A.C. 6A:15-1.2 specifically sets forth the requirements for a school district to meet the bilingual education provisions for MLs at N.J.S.A. 18A:35-15. The proposed amendments to the definition and throughout the chapter do not impact one-way programs, which are not designed to meet the requirements at N.J.A.C. 6A:15.

17. **Comment:** The commenter stated that the definition of “dual language immersion,” as proposed for amendment, will require students to speak a third language besides the target language and English at home. The commenter also stated that the amended definition will take away the opportunity for families who speak only English at home to join. The commenter further stated that solely defining dual language immersion as “two-way” suggests that one-way programs are not reasonable and must be dismantled. The commenter also stated that flexibility is needed around mandatory minimums in existing dual language immersion programs. (21)

**Response:** The Department disagrees. The definition of “dual language immersion program” at N.J.A.C. 6A:15-1.2 specifically sets forth the requirements for a school district to meet the bilingual education provisions for MLs at N.J.S.A. 18A:35-15. The proposed amendments to the definition and throughout the chapter do not impact one-way programs. School districts will not be prohibited from implementing a one-way dual language immersion program for native English speakers.

18. **Comment:** The commenter asked whether it would be beneficial to change the term “English as a second language (ESL) program” at N.J.A.C. 6A:15-1.2 to ensure continuity in the



Department's approach with the language and terms that describe students learning English as MLs. The commenter stated that "ESL" is not inclusive of students for whom English is a third or fourth language. The commenter offered the following suggestions for a new term: "English language services," "English language instruction," or "English as an additional language." (2)  
**Response:** The Department thanks the commenter for the suggestion to use asset-based terms. The Department recognizes the limitations inherent in the term "ESL" and acknowledges that many New Jersey students are learning English as a third or fourth language. At this time, the Department disagrees with changing the term as it is widely used and understood by the education community as the program for English language acquisition.

19. **Comment:** The commenter asked whether it is possible to offer flexibility in the amount of time required for a period of ESL instruction. The commenter stated that it is challenging to serve the number of students across a school district with various English proficiency levels. The commenter also stated that providing school districts flexibility in scheduling ESL class periods would allow ESL teachers to serve more students. (3)  
**Response:** The Department understands the challenges that may be present in scheduling students with varying English language proficiency levels. The Department disagrees with the commenter's suggestion because an ESL class period must be the same amount of time as other instructional class periods in the school district to provide sufficient time to teach the English language development (ELD) standards to MLs.
20. **Comment:** The commenter expressed appreciation for the change to ML from English language learner (ELL) and the acknowledgment that a student's primary language is an essential component of learning content in English and maintaining/sharing cultural knowledge. (6)  
**Response:** The Department thanks the commenter for the support.
21. **Comment:** The commenter opposed changing ELL to ML. The commenter asked whether other students, such as students studying foreign language in high school, will also be identified as MLs for example. The commenter stated that most educators and parents understand the current term. (25)  
**Response:** The Department disagrees. The shift to ML is an asset-based approach to understanding that students who are in the process of learning English enter New Jersey school districts with a primary language. New Jersey has a specific identification process for students who are identified for a LIEP.
22. **Comment:** The commenter stated that the definition of "sheltered English instruction" at N.J.A.C. 6A:15-1.2 needs to include the amount and intervals of training. The commenter stated that allowing school districts to decide how much training is necessary is not in students' best interest and creates inconsistencies and inequities across school districts. (4)  
**Response:** The Department agrees that school districts implementing sheltered English instruction as their LIEP program alternative need direction on how much training to provide teachers who are instructing a class with MLs. The Department already provides on its website guidance regarding the number of hours for training. The number of hours is a recommendation and best practice, but not a requirement. This model provides for more than a one-day training and is consistent with section 8101(42) of the Elementary and Secondary Education Act (ESEA), which requires that professional development be sustained (not stand-alone, one-day, or short term), intensive, collaborative, job-embedded, data driven, and classroom-focused. In addition, the Department monitors the number of trainings that school districts annually provide to teachers when reviewing a school district's request for a program waiver from bilingual education. Developed in partnership with Stockton University, the Department also offers a [free online module training](#)

available to all New Jersey teachers.

23. **Comment:** The commenters stated that the requirement at proposed new N.J.A.C. 6A:15-1.3(a)3i to test preschool MLs in the July prior to students entering kindergarten is impractical, especially in large school districts due to the cost of paying teachers to screen students for identification. The commenters also stated that most school districts place and schedule incoming kindergarten students prior to July. **(1 and 8)**

**Response:** The Department agrees with the commenters and proposes to amend N.J.A.C. 6A:15-1.3(a)3i at adoption to delete “[b]eginning in the July.” The proposed regulation will still require the district board of education to administer an English language proficiency (ELP) to preschool MLs, prior to the start of their kindergarten year, to determine the MLs’ English proficiency level. The proposed amendment recognizes that not all preschool MLs attend school in July and August and will account for school district operations.

- 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]] **\*Prior\*** to the start of their kindergarten year, the district board of education shall administer an ELP assessment to preschool MLs as part of the screener process to determine the ML’s English language proficiency level.**

24. **Comment:** The commenter applauded the Department’s inclusion of preschool MLs in the chapter, as proposed for amendment. **(6)**

**Response:** The Department thanks the commenter for the support.

25. **Comment:** The commenter recognized the flexibility the Department provides to school districts, in general, to implement programs in a manner that best fits the size and demographics of the school district’s ML population. However, the commenter stated that few New Jersey school districts have an administrator on staff who has expertise in language acquisition and administrators who do not have the experience or knowledge in second language acquisition may observe research-based programming and not understand the strategies being implemented in the classroom. The commenter requested that the chapter be amended to establish what a high-quality program for MLs should look like and how it is implemented. **(1)**

**Response:** The Department thanks the commenter for the suggestions. MLs in New Jersey are a diverse group of students. Therefore, the Department provides school districts with the flexibility to design high-quality programs that address the linguistic and academic needs of their specific ML population. The Department will include, in guidance related to this chapter’s proposed amendments, research-based considerations for school districts to use as a guide when reviewing their specific ML demographic data and the language needs of their individual MLs, which will drive the design of high-quality LIEPs required at N.J.A.C. 6A:15-1.4.

26. **Comment:** The commenter stated that school districts should offer instruction in students’ primary languages, where feasible, and that by doing enables students to master

content at the same time they develop their language capacity. (6)

**Response:** The Department agrees with the commenter that instruction in a primary language that enables a student to master the content at the same time the student is developing proficiency in English has academic value. N.J.A.C. 6A:15-1.4 sets forth school district requirements for bilingual programs, including that they must be linguistically and culturally responsive.

27. **Comment:** The commenter requested the Department maintain at N.J.A.C. 6A:15-1.4(a)1 the examples of “tutoring, after school programs, summer programs, and remedial services.” The commenter stated that, although replacing the examples with “individualized and targeted supports” is intended to clarify that all instructional opportunities must be designed to meet the specific needs of each ML, it would be valuable to include examples as guidance for school districts. (30)

**Response:** The Department declines to make the requested change at N.J.A.C. 6A:15-1.4(a)1 because “individualized and target supports” refers to a broader range of instructional opportunities for MLs and does not limit the possible supports to a few examples. The Department will consider the comments received during the rulemaking process when developing the supplemental guidance that will be provided to school districts following the adoption of the chapter, as proposed for amendment.

28. **Comment:** The commenter recommended that the Department amend N.J.A.C. 6A:15-1.2 and 1.4(c) to develop a clear and comprehensive definition of language accommodations, including first and target language supports that provide access to content concepts. The commenter suggested additional amendments at N.J.A.C. 6A:15-1.4(c) to require language accommodations, including, but not limited to, language objectives and strategies, in every classroom with MLs to provide access to grade-level content. The commenter stated that the additional requirement at N.J.A.C. 6A:15-1.7 for teachers to receive professional development does not address the commenter’s recommendation for a clear and binding definition of “language accommodations.” (30)

**Response:** The Department disagrees that the commenter’s recommended changes are necessary as pursuant to N.J.A.C. 6A:8-3.1(a), “District boards of education shall ensure that curriculum and instruction are designed and delivered in such a way that all students are able to demonstrate the knowledge and skills specified by the NJSLS and shall ensure that appropriate instructional adaptations are designed and delivered for students with disabilities, for ELLs... .” The Department has issued resources to support all school districts in providing language supports to students. Over the coming months, the Department will review and revise the resource, as necessary, to include updated evidence-based research as well as develop new supplemental guidance that will be provided to school districts following the adoption of the chapter, as proposed for amendment.

29. **Comment:** The commenter opposed the requirement for a bilingual curriculum at N.J.A.C. 6A:15-1.4 and with equating a bilingual curriculum with an ESL curriculum. The commenter stated that an ESL curriculum is its own subject area with its own set of standards and high-stakes assessment of English language acquisition. The commenter also stated that bilingual is a means of delivery of the New Jersey Student Learning Standards (NJSLS) and the only thing that differentiates a bilingual classroom from an English-medium classroom is the language of instruction. The commenter further stated that the requirement for a bilingual curriculum is a deficit-oriented approach and will lead to separate and unequal situations in school districts, which will encourage an “othering” of bilingual students. The commenter stated that a better approach would be to provide the same high-quality curriculum, differentiated by language. (1)

**Response:** The Department agrees to replace “bilingual education curriculum” with “curriculum for bilingual education programs” at new N.J.A.C. 6A:15-1.4(d)4. The Department also proposes to replace “addresses” with “is aligned to.” The proposed amendments at adoption will clarify that the Department intended to require curricula for bilingual education programs to be based on the NJSLs and ELD standards and that a new, separate curriculum for students in a bilingual education is not needed. The NJSLs-based curriculum for bilingual education programs integrates the history and culture of the country, territory, or geographic area that is the native land of the parents and families of MLs enrolled in the program, alongside the history and culture of the United States. School districts are not required to develop a separate bilingual curriculum, as it is expected that instruction in bilingual education programs is aligned with the NJSLs and ELD standards. The proposed amendments at N.J.A.C. 6A15-1.4(d)2 and (d)4 are as follows:

(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:

...

2. Include a curriculum that [[addresses]] **\*is aligned to\*** the NJSLs[[,]] **\*and\*** 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] **\*and\*** **includes primary language instruction delivered to further master literacy in the primary language and as a support in the development of English proficiency;** [and]

...

4. Utilize a [[bilingual education]] curriculum **\*for bilingual education programs\*** that is adopted by the district board of education.

30. **Comment:** The commenter asked why ELP levels are not included at N.J.A.C. 6A:15-1.4(d). The commenter stated that a school district with more than 20 MLs in one language classification who have an ELP level of three and a half or four do not really need bilingual programs. The commenter also stated that parents in one school district want their children exited from a program as soon as possible so that they are not labeled or separated. **(11)**

**Response:** The Department disagrees that ELP levels should be a part of the requirement at N.J.A.C. 6A:15-1.4(d) because school districts in New Jersey must have flexibility in program design and class configuration. The Department recognizes that a bilingual education program benefits a school district's instructional program and ensure that the focus on primary language provides MLs with an opportunity to strengthen their primary language and earn the State Seal of Biliteracy upon high school graduation.

- 31. Comment:** The commenter opposed the deletion of existing N.J.A.C. 6A:15-1.4(e). The commenter also stated that the Department proposed to delete this subsection because the proposed amendments at N.J.A.C. 6A:15-1.4(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 commenter objected to N.J.A.C. 6A:15-1.4(a), as proposed for amendment, because it will isolate MLs even more. The commenter stated that by not clarifying existing N.J.A.C. 6A:15-1.4(e), the Department is allowing school districts to separate the ELLs from school activities that aid in their confidence with the language and their chance to socialize. The commenter also stated that "with required services and courses" will allow school districts to interpret what is required even though the Department emphasizes the NJSLS. The commenter further stated that scheduling is difficult and school districts will misinterpret this change to the detriment of the student's school experience. The commenter stated that N.J.A.C. 6A:15-1.4, as proposed for amendment, leaves to interpretation who is responsible for ensuring the student will fully comprehend all subject matter. **(11)**

**Response:** The Department disagrees. N.J.A.C. 6A:15-1.5(a), as proposed for amendment, does not allow school districts to interpret what are required services and courses. Instead, the proposed amendment holds school districts accountable for the requirements at N.J.A.C. 6A:8-5.1, which sets forth the 120 credits by content area that make up the State's minimum graduation course requirements. The requirements include comprehensive health and physical education, visual and performing arts, and career awareness programs. The Department proposes to delete existing N.J.A.C. 6A:15-1.4(e) 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. Therefore, deleting N.J.A.C. 6A:15-1.4(e) does not change existing requirements; rather, it connects them more fully to the NJSLS and existing graduation requirements.

- 32. Comment:** The commenter recommended that the Department not delete existing N.J.A.C. 6A:15-1.4(e) because it is important to make clear that MLs must have access to all non-academic, as well as academic, courses. **(30)**

**Response:** The Department agrees with the commenter that it is important that MLs have access to all non-academic and academic courses. However, the Department is proposing to delete existing N.J.A.C. 6A:15-1.4(e) because N.J.A.C. 6A:15-1.4(a), as proposed for amendment, will require 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.

- 33. Comment:** The commenter stated that the proposed N.J.A.C. 6A:15-1.4(k) will create a substantial staffing constraint at a time of critical shortage. The commenter also stated that many bilingual ELA teachers have a combination of an instructional certificate with ESL and bilingual/bicultural education endorsements. The commenter further stated that

teachers with an ESL endorsement are no longer authorized to teach ELA to MLs and, therefore, it will become even more difficult to staff programs. The commenter stated the proposal is the antithesis of asset-based language. **(1)**

**Response:** The Department appreciates the commenter's concerns. Proposed new N.J.A.C. 6A:15-1.4(k) does not require teachers to have an ELA endorsement to teach an ESL course that counts toward ELA graduation credits.

- 34. Comment:** The commenter stated that the proposed amendments at N.J.A.C. 6A:15-1.4(k), which allow a district board of education to develop and adopt a policy that sets forth how MLs may meet the world language or ELA requirements by applying credits earned in ESL, will create inconsistencies across the more than 600 school districts in New Jersey. The commenter asked what happens to students who transfer to another school district in their junior or senior year and find out that the requirements from one school district do not count in the new school district and, as a result, negatively impact the student's ability to graduate. **(1)**

**Response:** The Department agrees that school districts must be provided with sample language for how to develop a policy that enables students to maximize this allowance, regardless of which school district the student attends. The Department will develop supplemental guidance that will be provided to school districts following the adoption of the chapter, as proposed for amendment.

- 35. Comment:** The commenters expressed concern with how MLs may meet the world language or ELA course requirements for high school graduation because graduation is a high-stakes event linked to post-secondary success. The commenters stated that the Department needs to adopt a uniform approach for all school districts across the State to follow N.J.A.C. 6A:15-1.4(k). The commenters also stated that students who are grappling with a new language(s) at the high school level need to be valued and recognized for their work in ESL classes. The commenters further stated that credits awarded by one public high school should count equally for ELA or a world language at any other public high school in New Jersey to ensure that the credits continue to be counted if a student transfers between New Jersey school districts. The commenters stated that the State should not place MLs at a further disadvantage because one high school had a policy that allows students to apply ESL course credit toward course credits required to graduate, while the high school to which a student transfers does not allow such credits to apply. **(24 and 27)**

**Response:** The Department agrees that supporting students' pathways toward graduation and post-secondary success is important. The Department also agrees that MLs must be provided clear notice about how they may meet their graduation requirements and whether they may apply credits earned in ESL courses to their world language or ELA credit requirements.

The Department has reexamined the policy set forth at proposed N.J.A.C. 6A:15-1.4(k) and at existing N.J.A.C. 6A:8-5.1(a)2i, which requires all district boards of education to establish a process to approve individualized student learning opportunities that meet or exceed the NJSLS. The Department's review revealed a misalignment between proposed N.J.A.C. 6A:15-1.4(k) and existing N.J.A.C. 6A:8-5.1(a)2, which already requires district boards of education to implement processes to enable students to pursue a variety of individualized learning opportunities. The purpose of N.J.A.C. 6A:15 is to ensure that educational programs (that is, programs required pursuant to N.J.A.C. 6A:15 and 6A:8) are designed to help students thrive and to honor their multilingual skills as an asset rather than to focus on only deficit-based remediation.

To ensure that MLs are fully afforded the rights set forth at N.J.A.C. 6A:15 and 6A:8, the Department proposes to clearly align proposed N.J.A.C. 6A:15-1.4(k) with

N.J.A.C. 6A:8-5.1(a)2. The Department proposes at adoption to amend proposed N.J.A.C. 6A:15-1.4(k) to replace “may develop and adopt a policy that sets forth how MLs may meet” with “shall establish a process for how MLs in high school.” The amendments proposed at adoption are parallel to the existing requirement at N.J.A.C. 6A:8-5.1(a)2 that district boards of education must set forth processes for all students to demonstrate they are meeting or exceeding the NJSLs through individualized learning opportunities. As long as the ESL coursework is aligned to the NJSLs in world language or ELA, the Department considers ESL coursework as an acceptable individualized learning opportunity for MLs. Since district boards of education must already establish processes to approve individualized learning opportunities for all students, school districts would not be harmed by the change at adoption at N.J.A.C. 6A:8-5.1(a)2. Additionally, the practice of applying ELA credits to meet the required world language or ELA graduation course credits is a common practice in many high schools throughout the State.

Even when students can apply ESL credits toward world language or ELA credits, the Department has learned that it is not typically accounted for on a student’s transcript or report card. A receiving school may be less likely to award credits for coursework that is not noted on a student’s transcript or official student record. The Department views the need for uniformity regarding student transcript practices for transferring MLs to be of equal importance to the uniformity in coursework policies related to individualized learning opportunities. Therefore, the Department proposes at N.J.A.C. 6A:15-1.4(k) to add that the school district must verify on the student’s record that the applicable ESL credits meet or exceed the NJSLs at the high school level. The amendment proposed at adoption will ensure that students do not lose credit when they transfer from one high school to another. The Department also proposes to delete proposed N.J.A.C. 6A:15-1.4(k)1 at adoption because the policy to ensure ESL coursework is aligned to grade-level NJSLs for ELA is now integrated in (k) above.

**(k) The district board of education [[may develop and adopt a policy that sets forth]] \*shall establish a process for\* how MLs \*in high school\* 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. \*The district board of education shall verify on a student’s record that the applicable ESL credits meet or exceed the NJSLs at the high school level.\***

**[[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.]]**

36. **Comment:** The commenter expressed concern and requested clarification about the regulations at N.J.A.C. 6A:15-1.4(k) that require teachers to have an instructional certificate with an ELA endorsement and for ESL to be aligned to the NJSLs in ELA to count toward graduation. The commenter requested further clarification on how the proposed change at N.J.A.C. 6A:15-1.4(k) will impact MLs with lower English language proficiency levels. The commenter stated that ESL currently supplants ELA at all levels

and that an ESL teacher is considered certified to teach ELA to MLs. The commenter stated that the requirement that teachers have an ELA endorsement to teach an ESL course that counts toward ELA graduation credits would create an additional barrier to graduation for students who are already statistically least likely to graduate. **(1)**

**Response:** The Department appreciates the commenter’s concerns. The Department agrees that the holder of an instructional certificate with an ESL endorsement is qualified to teach an ELA course and does not need to have an ELA endorsement. Proposed N.J.A.C. 6A:15-1.4(k) does not require teachers to have an ELA endorsement to teach an ESL course that counts toward ELA graduation credits. In addition, the Department proposes, at adoption, amendments at N.J.A.C. 6A:15-1.4(k) that will clarify that all ESL classes that count toward ELA course graduation requirements must be aligned to the grade-level NJSLs for ELA. School districts must use the ELD standards for ELA as a companion to the NJSLs for ELA to ensure that ELA instruction incorporates both ELA content standards and ELD standards, which should support MLs in acquiring both content and language based on their language proficiency levels. This proposed amendment will ensure that all students receive high-quality, grade-level coursework that is aligned to the NJSLs and ELD standards, with consideration to the MLs’ English language proficiency levels to prepare them for graduation.

37. **Comment:** The commenters stated that proposed N.J.A.C. 6A:15-1.4(k) does not treat all MLs equally across the State. The commenters also stated that families of MLs are mobile. The commenters asked what will happen to students’ graduation timelines if they move from one school district that adopted the policy to a school district that does not adopt the policy. **(24, 26, 27, 28, and 29)**

**Response:** The Department agrees with the commenters. Please see the response to Comment 35.

38. **Comment:** The commenter stated that ESL is a more developmentally appropriate course than ELA for MLs. **(29)**

**Response:** The Department agrees that MLs need to access the NJSLs in a manner that is culturally and linguistically appropriate for the student’s ELP level. ESL coursework considers a ML’s ELP. N.J.A.C. 6A:15-1.4(k)1 as proposed at adoption requires school districts to apply ESL coursework toward ELA course requirements, as long as the ESL course is aligned to the grade-level NJSLs for ELA.

39. **Comment:** The commenter requested that proposed new N.J.A.C. 6A:15-1.4(k) be amended to codify the Department’s current guidance regarding the application of ESL coursework to world language graduation credit requirements, applicable through the 2021-2022 school year. The commenter stated that the practice of awarding such credits has been successfully and fairly implemented across school districts. The commenter also stated that the proposed rule would reduce an ML’s ability to apply ESL coursework to world language or ELA credit requirements. **(28)**

**Response:** The Department agrees that codifying a policy for school districts to apply ESL coursework to graduation credit requirements is important. The proposed amendment at N.J.A.C. 6A:15-1.4(k), as described in the Department’s response to Comment 35, provides clarifying language.

40. **Comment:** The commenter requested changes at N.J.A.C. 6A:15-1.4(k) to replace “may” with “shall” to require school districts to adopt a policy that sets forth how MLs may use ESL coursework to meet the world language or ELA course graduation requirements. The commenter also recommended adding the following language: “The policy shall, at a minimum: provide that MLs who take an additional English or ESL class may use that



second English class to fulfill the world languages requirement and provide that ESL coursework that is aligned to grade-level NJSLs for ELA may be used to fulfill the ELA requirement.” The commenter stated that the shift from what it is currently a guarantee by the Department across all school districts, to the subject of a school district policy, may create burdens for MLs and their families and unfairly threaten the graduation prospects of this vulnerable community. **(28)**

**Response:** The Department thanks the commenter for the suggestion. The Department proposes at adoption to amend N.J.A.C. 6A:15-1.4(k) to require all school districts to adopt a policy in alignment with the procedures at N.J.A.C. 6A:8-5.1. Please see the response to Comment 35 for details.

41. **Comment:** The commenter stated that the commenter is not aware of any Department guidance regarding the application of ESL coursework to ELA credit requirements for high school graduation. The commenter referenced a communication by the New Jersey Principals and Supervisors Association that states “MLs have been authorized to utilize their course work in ESL as credits toward either ELA graduation credit or the world languages credit requirement.” The commenter stated that the practice of awarding such credits is successful. **(28)**

**Response:** The Department proposes at adoption to amend N.J.A.C. 6A:15-1.4(k) to require all school districts to adopt a policy in alignment with the procedures at N.J.A.C. 6A:8-5.1. Please see the response to Comment 35 for details.

42. **Comment:** While the commenter expressed appreciation for the Department’s efforts related to the proposed amendments at N.J.A.C. 6A:15-1.5, the commenter expressed concern that the proposed amendments regarding the submission process for school districts’ three-year plans are inadequate to fully meet the Department’s stated commitment to transparency and accountability. The commenter stated that, without proper mechanisms in place to ensure compliance, MLs and their families will continue to be underserved by school districts that are not fulfilling their legal obligations. The commenter suggested that the Department institute formal and transparent measures to ensure school districts comply with the chapter, including a process of robust evaluation of school districts’ required three-year plans – not just when submitted but also midway and at the end of the three-year period – to determine fidelity of implementation and effectiveness in serving the school district’s ELL population. The commenter also suggested that the Department develop and implement these accountability systems with the engagement of multiple stakeholders who have an interest in the chapter’s proper implementation (including educators, parents and caregivers, Statewide and local advocacy groups, and community members). **(30)**

**Response:** The Department agrees that stakeholder input is an important component of ensuring compliance with N.J.A.C. 6A:15. Further, pursuant to ESSA Sec. 1112(a)(1)(A), a school district’s plan for use of Federal funds must be “developed with timely and meaningful consultation with teachers, principals, other school leaders, paraprofessionals, specialized instructional support personnel, charter school leaders (in a local educational agency that has charter schools), administrators (including administrators of programs described in other parts of this title), other appropriate school personnel, and with parents of children in schools served under this part.” In addition, the Department agrees to assess whether additional points under NJQSAC are necessary to determine fidelity of implementation of the school district’s LIEP.

43. **Comment:** The commenter stated that the monitoring of the three-year plans submitted by school districts providing LIEPs needs improvement. The commenter also stated that

the Department’s proposed amendments at N.J.A.C. 6A:15-1.5 are inadequate to fully meet the Department’s stated commitment to transparency and accountability in ensuring all MLs receive high-quality and equitable educational opportunities. The commenter suggested that the Department institutes formal and transparent measures at N.J.A.C. 6A:15. The commenter also suggested that the Department includes a robust evaluation of the submissions of the three-year plans at mid-way and at the end of the three-year period. The commenter recommended that this process include multiple stakeholders who have an interest in the chapter’s proper implementation. **(6)**

**Response:** The Department agrees that stakeholder input is an important component of ensuring compliance with N.J.A.C. 6A:15. However, the Department disagrees that the proposed amendments at N.J.A.C. 6A:15-1.5 are inadequate because the Department regularly engages stakeholders through the State Advisory Committee on Bilingual Education, which is comprised of advocacy groups, retired educators, current supervisors, parents, teachers, and chief school administrators. The Department agrees that transparency is an important part of the accountability process. The Department will post on the Department’s website a list of school districts that have an approved three-year plan similar to the list of school districts approved for a bilingual waiver.

- 44. Comment:** The commenter requested that the Department establish, at N.J.A.C. 6A:15-1.5 or by adding another section, a complaint investigation system for violations of laws protecting ELLs, comparable to that which exists for special education at N.J.A.C. 6A:14-9.2. The commenter acknowledged the Department’s previous response at proposal level, which stated that a process already exists through the Department’s website for ESEA complaints. The commenter stated that there is an urgent need for a clear and dedicated avenue to address violations of the chapter. The commenter referenced the number of concerns documented in the 2021 report by NJTESOL/NJBE and the recent Newark Public Schools settlement with the United States Department of Justice as evidence of the need. **(30)**

**Response:** The Department disagrees that a formal complaint process is necessary as the current system does allow for parents and other stakeholders to alert the Department about alleged violations of N.J.A.C. 6A:15. The Department works directly with parents, stakeholders, and school districts to address concerns that are submitted to the Department. Parents and stakeholders may submit complaints directly to the Office of Supplemental Educational Programs through email ([ML@doe.nj.gov](mailto:ML@doe.nj.gov) and [parents@doe.nj.gov](mailto:parents@doe.nj.gov)). The Office of Supplemental Educational Programs formally responds to all received complaints through email.

- 45. Comment:** The commenters recommended changes at recodified N.J.A.C. 6A:15-1.8(b)1 and 2 in regards to teachers of dual language immersion programs to add the following: “in accordance with N.J.A.C. 6A:9B-11.5(a)2ii, demonstrate advanced language proficiency in the language of their instruction as measured by: (1) passing a Department-approved, nationally recognized test of oral and written proficiency in the target language; or (2) establishing themselves as a speaker of the target language who was primarily educated at the undergraduate level in that language.” The commenters stated that the changes are necessary due to the school staffing crisis in New Jersey and across the nation in the areas of English language learning, world languages, and bilingual/bicultural education. The commenters also stated that the Department’s proposed amendments at N.J.A.C. 6A:15-1.8(b) create unnecessary barriers such as licensure fees, additional applications, and lengthy coursework for educators seeking to work in dual language immersion programs. **(7, 9, 10, 12, 14, 15, 16, 17, 18, and 22)**

**Response:** The Department agrees that decreasing barriers to certification is one way to

increase the number of applicants seeking an instructional certificate to teach in dual language immersion programs. The commenters' recommended language is already included at proposed new N.J.A.C. 6A:15-1.8(b)2, which states that all teachers in a dual language immersion program must demonstrate fluency in the language of their instruction, pursuant to N.J.A.C. 6A:9B-11.5. The proposed rule will allow the flexibilities recommended by the commenter. The Department disagrees with the commenters because the Department's proposed amendments at N.J.A.C. 6A:15-1.8(b) do not create new requirements related to licensure fees, additional application, and lengthy coursework.

46. **Comment:** The commenter stated that the proposed amendments to the chapter and the nationwide teacher shortage would cause the dual language immersion program in the commenter's school district to be decimated. The commenter also stated that the school district would be unable to staff the program with the new certification requirements and does not have the student numbers for a dual language immersion program that is designed as a two-way bilingual education program. **(9)**

**Response:** The Department supports dual language immersion programs and disagrees that the certification requirements at N.J.A.C. 6A:15-1.8(b)2 would cause programs to be decimated. The proposed paragraph references N.J.A.C. 6A:9B-11.5, which contains existing requirements for the bilingual/bicultural education endorsement to an instructional certificate. The proposed paragraph also applies only to dual language immersion programs that are intended to meet the chapter's requirements. The proposed amendments throughout the chapter do not impact two-way dual language immersion programs that are not intended to meet the chapter's requirements.

47. **Comment:** The commenter stated that the proposed one-way, late-exit programs are effective for primary language development, but school districts are penalized when students spend more than four years in ML status. The commenter also stated there is no mention of one-way programs in the proposed amendments. **(1)**

**Response:** The Department disagrees. School districts are not penalized when students remain in ML status for longer than four years. The length of time a student receives services is not a factor in the State accountability system. Rather, schools are identified as needing additional support and are accountable for the improvement of their students' performance. Federal reporting requires the Department to report the total number of students who are in ML status for longer than five years. In addition, the ESSA indicator of progress toward English proficiency is based on a five-year growth-to-target model. This is only one indicator that factors into the comprehensive and targeted school improvement identification. However, low performance or students in ML status for more than four years alone will not cause a school to be identified. The Department uses this indicator to provide school districts with technical assistance and support related to evaluating their LIEP and assessing the most appropriate program design for the MLs they serve. The proposed amendments apply only to bilingual education and dual language immersion programs that are intended to meet the chapter's requirements. The proposed amendments to the definition of "bilingual education" at N.J.A.C. 6A:15-1.2 clarify that, by using a student's primary language while the student is acquiring English, educators will be delivering bilingual programs that are similar to one-way bilingual or dual language immersion programs.

48. **Comment:** The commenters expressed concern with the impact of the proposed amendment at recodified N.J.A.C. 6A:15-1.8 to change the ESL certificate to an endorsement. The commenters state there is no mention of a path toward certification in

N.J.A.C. 6A:15, as proposed for amendment. Referring to N.J.A.C. 6A:9B, the commenters stated that an ESL endorsement consist of 30 credits, an undergraduate major, or a master's degree in ESL is required, in addition to grade level or subject area certification. The commenters also stated that the proposed amendment will increase the already acute shortage of teachers qualified to teach MLs, especially at the secondary level. The commenters further stated that most universities in New Jersey do not currently offer the opportunity to pursue certification in ESL or bilingual education at the undergraduate level. **(1 and 20)**

**Response:** The proposed amendments at recodified N.J.A.C. 6A:15-1.8(c) are for clarity and consistency with N.J.A.C. 6A:9B, State Board of Examiners and Certification. N.J.A.C. 6A:9B-11.6 refers to an instructional certificate with an ESL endorsement. The addition of “instructional” and “endorsement” will align the regulation with N.J.A.C. 6A:9B-11.6 and do not establish a new requirement for teachers of ESL classes.

49. **Comment:** The commenters opposed the proposed rules at N.J.A.C. 6A:15-1.8(e) that require bilingual paraprofessionals to hold a bilingual paraprofessional credential because it is another barrier for staffing that will have a profound impact and prevent school districts from adequately staffing dual language immersion programs. **(12 and 14)**

**Response:** The Department thanks the commenters for raising the issue regarding implementation. The Department previously proposed to delete new N.J.A.C. 6A:15-1.8(e), which stated that 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. The now-deleted proposed rule was intended to highlight the recently adopted requirements at N.J.A.C. 6A:9B-14.22. The new credential will be available in the near future, but it will not be mandatory for bilingual paraprofessionals. The new credential is intended to acknowledge the work of bilingual paraprofessional and will provide a role to further support bilingual students in classrooms and increase students’ access to content and instruction.

50. **Comment:** The commenter stated that parents play a critical role in the educational success of their children. The commenter also stated that, for parents to participate in education decisions affecting their children, they must be given access to education documents and materials they can understand. The commenter contended that many New Jersey parents are not provided with the information to which they are entitled and this creates inequity. The commenter stated that the existing chapter is limited to parents of MLs and falls short of Federal guidance that requires translation and interpretation services to parents who speak world languages other than English. The commenter offers the U.S. Department of Justice and U.S. Department of Education, Dear Colleague Letter: English Learner Students and Limited English Proficient Parents as a reference on how schools can better support parents whose primary language is not English. **(4)**

**Response:** The Department recognizes the importance of school district engagement of all families with students in New Jersey schools. The Department agrees that essential information and communication from the school district must be available in the language in which the parent possesses a primary speaking ability. Such communication is critical to achieving meaningful family engagement. Additionally, ML parents are also entitled, pursuant to Titles I and III of ESSA and the IDEA, to translation and interpretation of particular information. Accordingly, the Department proposes new N.J.A.C. 6A:15-1.14(a)1 to include a non-exhaustive list of parent communications that school districts must provide in the language in which the parent possesses a primary speaking ability. By complying with ESSA, IDEA, and N.J.A.C. 6A:15, as proposed for amendment, LEA requirements will meet the Federal guidance and expectations.

51. **Comment:** The commenter stated that additional amendments are required at N.J.A.C. 6A:15-1.14(a) to expand and clarify translation requirements regarding all school records. **(4)**  
**Response:** The Department agrees with the commenter’s request for additional specificity regarding what a school district is required to provide in multiple languages. At proposal level, the Department added at new N.J.A.C. 6A:15-1.14(a)1 a non-exhaustive list of parent communications that school districts must provide in the language in which the parent possesses a primary speaking ability.
52. **Comment:** The commenter stated that, in alignment with Federal law and guidance, the Department and school districts must ensure meaningful communication with parents in a language they can understand. The commenter stated that the Federal requirements apply to state educational agencies, as well. The commenter requested that the Department amend N.J.A.C. 6A:15 to make it clear that the Department is also subject to the provision to make information accessible to all parents in a language they can comprehend. The commenter stated the Department can prioritize translation actions, such as the 2019 version of the Parental Rights in Special Education (PRISE) handbook. **(30)**  
**Response:** The Department agrees that it has a responsibility under Federal law, and ethically, to ensure meaningful communication with parents. However, the Department declines to amend N.J.A.C. 6A:15 as requested because the chapter governs district boards of education providing educational programs and services to MLs and not to the Department. Whenever possible, the Department posts on its website written guidance in multiple languages. For example, translations of the 2023 version of the [PRISE](#) handbook are expected to be released in July 2023 and will be available in four languages other than English. Additionally, the Department works with each school district to ensure that it is providing parents with resources and access, including translation and interpreter services, when needed. The Department also is committed to exploring how to implement a State-level process to issue communications in multiple languages and formats that are accessible to families.
53. **Comment:** The commenter requested the Department add additional requirements at N.J.A.C. 6A:15 that specify the obligations of school districts to ensure meaningful communication with families, including that translations and interpretations must be provided by qualified and appropriately trained individuals. **(30)**  
**Response:** The Department agrees that school district communications to parents in the parents’ primary language must apply to all information, not only official notifications set forth at N.J.A.C. 6A:15-1.12. At proposal level, the Department amended N.J.A.C. 6A:15-1.14 to include a non-exhaustive list of parent communications that school districts must provide in the language in which the parent possesses a primary speaking ability. Additionally, the Department has a parent portal in Spanish that provides families with important information regarding their child’s education.
54. **Comment:** The commenter requested that the Department provide supports to school districts in implementing the translation requirements at N.J.A.C. 6A:15. The commenter also requested that the Department take enforcement action against school districts that violate the translation mandates. The commenter asked the Department to clarify that the translation provision apply to all staff who communicate with family members. **(30)**  
**Response:** The Department works with each school district to ensure that it is providing resources and access to parents, including translation and interpreter services, when needed. To ensure that school districts comply with the requirements at N.J.A.C. 6A:15, the Department monitors all school district programs through the NJQSAC, adheres to the procedures required pursuant to the ESSA, and conducts a review of each school district’s plan when it is submitted every three years.

55. **Comment:** The commenter applauded the Department for expanding bilingual education rights to preschool children. However, the commenter stated that no changes have been proposed to address the hardship and significant inequities experienced by children whose parents do not speak English as their primary language. The commenter shared a scenario of a parent who indicated that a school district would not provide the parent with information in a way the parent could understand. The commenter stated the school district failed to comply with State regulations regarding enrollment. **(4)**  
**Response:** The Department agrees that every parent should be able to enroll their child in a New Jersey school district without any barriers, including language. The Department has specified a non-exhaustive list at N.J.A.C. 6A:15-1.14(a) of parent communications that school districts must provide in the language the parent possesses a primary speaking ability. The list includes communication related to registration and enrollment. In addition to State requirements at N.J.A.C. 6A:22, Student Residency, the U.S. Department of Justice and [U.S. Department of Education’s Office of Civil Rights](#) require all school districts provide enrollment and registration information to parents in a language they can understand.
56. **Comment:** The commenter stated that the Department and school districts should provide essential information and communications in the primary languages of parents and caregivers who do not speak English. The commenter referenced the Brookings Institute report “Collaborating to Transform and Improve Educational Systems: A Playbook for Family Engagement, statement that “[s]chools with strong family engagement are 10 times more likely to improve student learning outcomes.” **(6)**  
**Response:** The Department agrees with the commenter. Proposed new N.J.A.C. 6A:15-1.14(a)1 includes a non-exhaustive list of essential information and communication that each district board of education must provide in the primary language a parent possesses for the maximum practicable engagement.
57. **Comment:** The commenter stated that the bilingual waiver, as set forth at new N.J.A.C. 6A:15-1.15, should be the last recourse for school districts in providing appropriate programs for MLs. **(6)**  
**Response:** The Department appreciates the commenter’s support.
58. **Comment:** The commenter stated that school districts should offer instruction in students’ primary languages, where feasible, and that by doing so, it enables students to master content at the same time they develop their language capacity. **(6)**  
**Response:** The Department agrees with the commenter that instruction in a primary language that enables a student to master the content at the same time the student is developing proficiency in English has academic value. N.J.A.C. 6A:15-1.4 sets forth school district requirements for bilingual programs, including that they must be linguistically and culturally responsive.
59. **Comment:** The commenter suggested the Department consider and remedy barriers to career pathways and recruitment of bilingual and/or Black, Indigenous, and people of color (BIPOC) educators, mental health professionals, counselors, and administrators, which are underrepresented in New Jersey’s preschool-through-grade-12 educational system. The commenter stated the Department must invest in the recruitment and training of diverse education professionals who reflect the racial, ethnic, and linguistic demographics of New Jersey’s student population. The commenter requested that the Department act with urgency to invest in recruitment and retention beyond guidance and professional development. The commenter stated the Department must articulate and

invest in infrastructure that supports the development of career pathways with specific focus on the recruitment of BIPOC individuals to work in education. (6)

**Response:** While career pathways, recruitment, and funding are outside of the chapter’s scope, the Department agrees that increasing the diversity of education professionals is a priority. The Department is committed to achieving, by 2025, the goal that all students, regardless of race, will have access to an ethno-racially diverse novice (teachers with four years of experience or less) educator workforce that more closely reflects the diversity of the State’s student population and that is culturally responsive.

60. **Comment:** The commenter requested that the Department articulate and invest in infrastructure that supports career pathways and recruitment of bilingual and/or BIPOC educators, mental health professionals, counselors, and administrators who are underrepresented in New Jersey’s preschool-to-grade-12 educational system. The commenter stated this is an urgent need. The commenter added that the elimination of barriers to licensure of ESL/bilingual educators, such as edTPA, is necessary. (30)

**Response:** While career pathways, recruitment, and funding are outside of the chapter’s scope, the Department agrees that increasing the diversity of education professionals is a priority. The Department is committed to achieving, by 2025, the goal that all students, regardless of race, will have access to an ethno-racially diverse novice (teachers with four years of experience or less) educator workforce that more closely reflects the diversity of the State’s student population and that is culturally responsive.

61. **Comment:** The commenter stated that N.J.A.C. 6A:8-5.1 grants permission to use a second period of ESL as the world language requirement. (1)

**Response:** Comments regarding N.J.A.C. 6A:8 are out of the scope of the proposed readoption with amendments of N.J.A.C. 6A:15.

62. **Comment:** The commenter stated that the requirement at N.J.A.C. 6A:8-5.1(a)2ii(2) for an ML who has arrived in high school has to achieve the level of language proficiency designated as Novice-High by the ACTFL is deficit-based and suggests a student’s transcripts should count toward graduation credits rather than one of the optional language assessments. (1)

**Response:** Comments related to N.J.A.C. 6A:8, which sets forth the requirements for granting of credits to fulfill the world languages requirement through successful completion of assessments that verify student achievement in meeting or exceeding the NJSLs at the high school level, are out of the scope of the proposed amendments related to N.J.A.C. 6A:15.

63. **Comment:** The commenter requested that the Department and school districts dedicate funding to ensure that communication is in a language and format comprehensible to parents and family members. (30)

**Response:** Funding is outside of the chapter’s scope. However, the Department is committed to helping school districts by identifying model school districts that effectively communicate to parents and families.

64. **Comment:** The commenter requested that the Department identify funding sources available to school districts for the purpose of identifying and providing services to MLs as set forth at N.J.A.C. 6A:15. (28)

**Response:** Funding is outside of the chapter’s scope. The Department’s [Maximizing Federal Funds](#) webpage provides school districts with details on Federal funding streams, list of allowable uses, and how to combine multiple streams to support various parts of an initiative to meet one purpose.



65. **Comment:** The commenter expressed concerns about the cost of education and the use of taxpayers' monies to fund an education for undocumented immigrants. **(23)**  
**Response:** The Department disagrees. According to the *Plyler v. Doe* (1982) decision, all states are required to provide education for all children, regardless of immigration status. The services and supports set forth at N.J.A.C. 6A:15 are required pursuant to State and Federal laws, N.J.S.A. 18A:35-15 to 26 and the Elementary and Secondary Education Act of 1965, as amended by the ESSA, respectively.
66. **Comment:** The commenter stated there is a lack of clarity with respect to the terms of certification and endorsement at N.J.A.C. 6A:9B-9.3. The commenter states that all subject areas, including ELA, mathematics, social studies, and science are referred to as endorsements. **(1)**  
**Response:** N.J.A.C. 6A:9B-9.3 falls outside the scope of this rulemaking. Any reference at N.J.A.C. 6A:15 to certification and endorsements aligns to N.J.A.C. 6A:9-2.1, which states that each certificate must be issued with at least one endorsement.

### Agency-initiated Changes

1. At adoption level, the Department proposes at N.J.A.C. 6A:15-1.2 to amend the definition of “Sheltered English instruction.” The Department proposes to replace “approach used” with “program alternative” to align to the other definitions that are LIEP alternatives, including “high-intensity ESL program” or “bilingual tutorial program.” The proposed amendment at adoption will provide consistency across definitions of instructional program alternatives.

“Sheltered English instruction” means an instructional [[approach used]] **\*program**

**alternative\*** 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**.

2. At adoption level, the Department proposes at N.J.A.C. 6A:15-1.3(a)3 to delete “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**” because the process of conducting a records review is set forth at proposed new N.J.A.C. 6A:15-1.3(a)2i. The description of the records review was inadvertently maintained N.J.A.C. 6A:15-1.3(a)3. Including the records review process at N.J.A.C. 6A:15-1.3(a)2i safeguards against an overidentification of students as MLs. The Department also proposes to delete “and who have at least one other indicator” because the administration of the ELP assessment is the last step for identification of a student as an ML and there are no other indicators.



[(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.**

3. At adoption level, the Department proposes at new N.J.A.C. 6A:15-1.4(b)4 to replace “in addition” with “as part of.” The Department proposes at new N.J.A.C. 6A:15-1.4(b)5 to replace “alternative programs” with “program alternatives” to align with the defined term “instructional program alternative” at N.J.A.C. 6A:15-1.2.

**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]] **\*as part of\*** the regular school program.**

**5. Instructional [[alternative programs]] **\*program alternatives\*** may be implemented pursuant to N.J.A.C. 6A:15-1.15.**

4. The Department proposes to amend new N.J.A.C. 6A:15-1.8(b) at adoption to eliminate possible confusion regarding the regulation’s requirements. The Department proposes to clarify that the certificate requirements for dual language immersion programs applied only to programs designed to meet the LIEP requirements at N.J.S.A. 18A:35-18 and this chapter.

Although more than one teacher typically provides instruction in many dual language immersion programs, proposed N.J.A.C. 6A:15-1.8(b) stated that the certificate requirements applied to “all teachers” instructing in a dual language immersion program. Therefore, the Department seeks to clarify that all of the required endorsements may be held by one teacher or multiple teachers providing instruction. For example, a teacher with an instructional

certificate and an elementary endorsement may also hold the additional required endorsement (that is, bilingual/bicultural education or world languages). Alternatively, a teacher who holds an elementary endorsement but not one of the additional required endorsements may partner with a teacher who holds an instructional certificate and a bilingual/bicultural or a world language endorsement. The proposed amendments at adoption will afford school districts the staffing flexibility that was originally intended, while maintaining the minimum certificate requirements necessary to lead a LIEP program as required at N.J.S.A. 18A:35-18 and N.J.A.C. 6A:9B-9.3(b)1.

Finally, the Department proposes to delete N.J.A.C. 6A:15-1.8(b)3 as it repeats the requirement at N.J.A.C. 6A:15-1.8(b)1.

(b) [[All teachers of dual]] **\*Dual\*** language immersion programs<sup>\*,\*</sup> [[shall]]

**\*for the purpose of meeting the LIEP requirements at N.J.S.A. 18A:35-18**

**and this chapter, may be taught by one or more teachers. In these dual**

**language immersion programs, the following endorsements to an**

**instructional certificate shall be fulfilled by one or more teachers\*:**

1. [[Hold a valid New Jersey instructional certificate with an]] **\*An\*** endorsement for the appropriate grade level and/or academic content area **\*being taught\***; and [[an]]

**\*2. An\*** endorsement in bilingual/bicultural education or world languages[[;]] **\*.\***

[[2.]] **\*i.\*** [[Demonstrate fluency]] **\*A teacher of a language other than English has demonstrated linguistic competence\*** in the language of their instruction, pursuant to N.J.A.C. [[6A:9B-11.5; and]] **\*6A:9B-10.5 or 11.5(a)2.\***

[[3. Teach in the academic content area authorized by the endorsement to their instructional certificate.]]

5. At adoption level, the Department proposes at new N.J.A.C. 6A:15-1.9(b) to amend a change for grammatical reasons. The Department also proposes to delete “goals” because its use does not align to the language regarding the Department-established cut score that MLs meet to participate in classrooms where instruction is delivered in English. The annual ELP assessment measures the ESSA accountability indicator “Progress Toward English Language Proficiency.” All MLs must meet a Department-established cut score to determine readiness to exit the LIEP.

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

*Note: The rule text provided in this comment and response form reflects the progression of the rule proposals. The rule text included further below in the New Jersey Administrative Code portion of this document reflects the rules as they are being put forth at Adoption Level.*



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

Adoption Level  
July 12, 2023

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 and any other Department-approved language instructional program alternative. For the first time, the Department is codifying dual language immersion program requirements designed to fulfill the

chapter's LIEP requirements. Dual language immersion programs for general student populations remain outside of the chapter's purview. 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 “alternate English language proficiency (ELP) assessment,” which means Department-approved assessment for students with the most significant cognitive disabilities that assesses a student’s English language proficiency. The Department proposes to delete “State’s academic achievement standards as permitted under the Every Student Succeeds Act (ESSA).” Instead, the Department proposes to add “ELD standards” as the alternate ELP assessment is more precisely used to assess a student’s English proficiency and progress on the ELD standards. The same amendment is proposed to the definition of “English language proficiency (ELP) assessment.”

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 “approach use” with “program alternative” and “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,” respectively. 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 placement in a LIEP. This section delineates the steps school districts must take to identify students as 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 proposes to delete “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” and “and who have at least one other indicator.” Proposed N.J.A.C. 6A:15-1.3(a)2i now includes the description of the review of various inputs that can be considered at the second step. 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 as part of the screening process 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 the district board of education to administer, prior to the start of their kindergarten year, 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 language proficiency assessment, unlike students in kindergarten through grade 12. Instead, preschool students are administered the assessment prior to, or 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 new 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 as part of the regular school program 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 program alternatives 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 includes primary language instruction delivered to further master literacy in the primary language and as a support in the development of English proficiency. The Department proposes to replace “addresses” with “is aligned to” and to delete “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 curriculum to be aligned to the NJSLs and 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 curriculum for bilingual education programs 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 require the district board of education to establish a process for how MLs in high school 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 to require the district board of education to verify on a student’s record that the applicable ESL credits meet or exceed the NJSLS at the high school level. The proposed subsection will ensure that educational programs that are required pursuant to N.J.A.C. 6A:15 and 6A:8 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 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 at N.J.A.C. 6A:15-1.4.

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 district-and school-level plans for the professional development requirements at N.J.A.C. 6A:9C-4.2” at the beginning of the subsection. The Department also proposes to replace “develop a plan for inservice training” with “describe professional learning.” 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 allow dual language immersion programs for the purpose of meeting the LIEP requirements at N.J.S.A. 18A:35-18 and N.J.A.C. 6A:15 to be taught by one or more teachers. The proposed subsection also will require the following endorsements to an instructional certificate to be fulfilled by one or more teachers: 1) an endorsement for the appropriate grade level and/or academic content area being taught; and 2) an endorsement in bilingual/bicultural education or world languages. Proposed N.J.A.C. 6A:15-1.9(b)2i states that a teacher of a language other than English has demonstrated linguistic competence in the language of their instruction, pursuant to N.J.A.C. 6A:9B-10.5 or 11.5(a)2.

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.

**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 to amend N.J.A.C. 6A:15-1.9(b), which requires students to be assessed annually using ELP assessments, to replace "enrolled in the bilingual, ESL, or English language services program" with "identified as MLs" and "determine their progress in achieving English language proficiency goals" with "measure the progress toward English language proficiency." The proposed amendments will align to the subsection with terms used throughout the chapter and will focus on measuring progress rather than achieving a stagnant goal.

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 proposes new N.J.A.C. 6A:15-1.14(a)1 to include a non-exhaustive list of parent communications that school districts must provide in the language in which the parent possesses a primary speaking ability. Recognizing the importance of school district engagement of all families with students in New Jersey schools, the proposed paragraph will help ensure that essential information and communication from school districts and schools must be available in the language in which the parent possesses a primary speaking ability. Such communication is critical to achieve meaningful family engagement. Additionally, ML parents are also entitled, pursuant Titles I and III of ESSA and the Individuals with Disabilities Education Act (IDEA), to translation and interpretation of particular information.

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 readoption 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 readoption 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 readoption 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 readoption with amendments concern the provision of language instruction programs for MLs.

**Full text** of the rules proposed for readoption 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)] **ELD standards** 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](http://www.wida.us)) and are available for review at [<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] **ELD standards.**

“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] **program alternative** 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, 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] **assessment**. Students who do not meet the [Department standard] **Department-established cut score** on [a] **the English** language proficiency [test and who have at least one other indicator] **assessment** 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. Prior to the start of their kindergarten year, the district board of education shall administer an**

**ELP assessment to preschool MLs as part of the screener process 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.
- (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.]
- (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 (c) 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 as part of the regular school program.**
  5. **Instructional program alternatives 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.**
- (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] **is aligned to** the NJSLs[,], **and** 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] **and includes 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 curriculum for bilingual education programs 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 requirements at (b)2 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 shall establish a process for how MLs in high school 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. The district board of education shall verify on a student’s record that the applicable ESL credits meet or exceed the NJSLS at the high school level.**

[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 district- and school-level plans for professional development requirements at N.J.A.C. 6A:9C-4.2, the** district board of education shall [develop a plan for inservice training] **describe professional learning** 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] **district- and school-level 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) Dual language immersion programs, for the purpose of meeting the LIEP requirements at N.J.S.A. 18A:35-18 and this chapter, may be taught by one or more teachers. In these dual language immersion programs, the following endorsements to an instructional certificate shall be fulfilled by one or more teachers:**

- 1. An endorsement for the appropriate grade level and/or academic content area being taught; and**
- 2. An endorsement in bilingual/bicultural education or world languages.**
  - i. A teacher of a language other than English has demonstrated linguistic competence in the language of their instruction, pursuant to N.J.A.C. 6A:9B-10.5 or 11.5(a)2.**

**[(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.

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 ELP assessments to [determine their

progress in achieving] **measure the progress toward** English language proficiency [goals] and **to determine** 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.**

[(b)] (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.

[(c)] (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**.

[(d)] (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**.

1. **This duty includes- ensuring all information regarding an ML's educational experience is available in the language in which the parent possesses a primary speaking ability, and in English. This information includes, but is not limited to, district- and school-level policies, invitational letters regarding school or district programs, information regarding student discipline policies and procedures, registration and enrollment, report cards, requests for parent permission for student participation in district or school activities, parent-teacher conferences, parent handbooks, and gifted and talented programs.**

- (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)].