

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 208, 215, 305, 2117 and 3204

1. Section 154.2 of the Regulations of the Commissioner of Education is amended, effective February 1, 2014, as follows:

154.2 Definitions.

(a) Pupils with limited English proficiency shall mean pupils who by reason of foreign birth or ancestry, speak a language other than English and:

(1) . . .

(2) score below a State designated level of proficiency, on the Language Assessment Battery-Revised (LAB-R) prior to February 1, 2014, or on the New York State Identification Test for English Language Learners (NYSITELL) commencing February 1, 2014 and thereafter, or on the New York State English as a Second Language Achievement Test (NYSESLAT); provided, however, that no pupil shall be served in a bilingual or English as a second language education program pursuant to this Part for a period in excess of three years from the date of enrollment in school unless such period is extended by the commissioner with respect to an individual pupil in accordance with the provisions of subdivision 2 of section 3204 of the Education Law.

(b) Initial identification is the process followed to determine if the pupil is limited English proficient, at the time of a pupil's enrollment in the New York State public school system for the first time or at the time of a pupil's reentry into the New York State public school system with no available record of prior screening, based upon such pupil scoring below a State designated level of proficiency on the LAB-R prior to February 1, 2014, or on the NYSITELL commencing February 1, 2014 and thereafter.

(c) Annual English language assessment is the process followed to determine if a pupil with limited English proficiency continues to be limited English proficient, based upon such pupil scoring below a State designated level of proficiency on the NYSESLAT.

(d) . . .

(e) . . .

(f) . . .

2. Subdivision (l) of section 154.3 of the Regulations of the Commissioner of Education is amended, effective February 1, 2014, as follows:

(l) A pupil whose score on the LAB-R prior to February 1, 2014, or on the NYSITELL commencing February 1, 2014 and thereafter, or on the NYSESLAT, as specified in section 154.2(a),(b) and (c) of this Part, is a result of a disability shall be provided special education programs and services in accordance with the individualized education program (IEP) developed for such pupil pursuant to Part 200 of this Title, and shall also be eligible for services pursuant to this Part when such services are recommended in the IEP. A pupil with a disability receiving services in accordance with the provisions of this section shall be counted as a pupil with limited English proficiency, as well as a student with a disability, for purposes of calculating State aid pursuant to section 3602 of the Education Law.