

## **AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION**

**Pursuant to Education Law sections 207, 208, 215, 305, 2117, 2854(1)(b) and 3204**

**Subpart 154-3 of the Regulations of the Commissioner of Education is added, effective December 3, 2014, as follows:**

### **SUBPART 154-3**

#### **IDENTIFICATION AND EXIT PROCEDURES FOR STUDENTS WITH DISABILITIES FOR ENGLISH LANGUAGE LEARNER PROGRAMS OPERATED IN THE 2015-2016 SCHOOL YEAR AND THEREAFTER**

##### **154-3.1 Scope of Subpart and applicability.**

The provisions of this Subpart shall apply to students with disabilities who are subject to the initial and reentry process and determination of English proficiency pursuant to section 154-2.3(a) of this Part and the exit procedures pursuant to section 154-2.3(m) of this Part in programs operated beginning with the 2015-2016 school year and thereafter. Except as otherwise provided in this Subpart, all other provisions of Subpart 154-2 of this Part shall apply to students with disabilities who are English Language Learners in programs operated beginning with the 2015-2016 school year.

##### **154-3.2 Definition.**

Language Proficiency Team (LPT) shall mean a committee that makes a recommendation regarding the initial assessment of English Language Learner status for a student with a disability. The LPT shall be minimally comprised of a school/district administrator; a teacher or related service provider with a bilingual extension and/or a teacher of English to Speakers of Other Languages, certified pursuant to Part 80 of this

Title; the director of special education or individual in a comparable title (or his or her designee); and the student's parent or person in parental relation. A qualified interpreter or translator of the language or mode of communication the parent or person in parental relation best understands, as defined in section 154-2.2(t) of this Part, shall be present at each meeting of the LPT.

154-3.3 Determination of whether a student with a disability shall take the statewide English language proficiency identification assessment.

(a) For students with disabilities who are subject to the initial and reentry identification process and determination of English language proficiency pursuant to section 154-2.3(a) of this Part, following the administration of Steps 1 and 2 and prior to the administration of Step 4 pursuant to section 154-2.3(a) of this Part, the following provisions shall apply:

(1) For a student identified as having a disability, a Language Proficiency Team (LPT), as defined in section 154-3.2 of this subpart, shall make a recommendation as to whether there is evidence that the student may have second language acquisition needs.

2) In making this recommendation, the LPT shall, in accordance with guidance prescribed by the commissioner, consider evidence of the student's English language development, including, but not limited to:

- (i) the results of Steps 1 and 2 in section 154-2.3(a)(1) and (2) of this Part;
- (ii) the student's history of language use in school and home or community;
- (iii) the individual evaluation of the student conducted in accordance with the procedures in section 200.4(b)(6) of this Title, which shall include assessments administered in the student's home language; and

(iv) information provided by the Committee on Special Education (CSE) as to whether the student's disability is the determinant factor affecting whether the student can demonstrate proficiency in English.

(3) Based on the evidence reviewed in paragraph (2) of this subdivision , the LPT must make a recommendation as to whether student may have second language acquisition needs or whether the student's disability is the determinant factor affecting whether the student could demonstrate proficiency in English during step 2 in section 154-2.3(a)(2) of this Part.

(4) If the LPT recommends that the student does not have second language acquisition needs and therefore should not take the English language proficiency identification assessment to identify the student as an English language learner, such recommendation shall be referred to the school principal for review.

(5) If, upon review, the school principal agrees with the recommendation of the LPT that the student is not an English Language Learner and will not take the English language proficiency identification assessment, the school principal shall inform the parent or person in parental relation of this recommendation, in the language or mode of communication the parent or person in parental relation best understands.

(6) Upon receipt of a recommendation by the school principal, the Superintendent or his or her designee shall review the school principal's recommendation and make a final determination to accept or reject the school principal's recommendation within ten (10) days of receiving the school principal's recommendation. If the Superintendent determines that the student is not an English Language Learner, notice of such determination shall be provided to the parent or person in parental relation in the language or mode of communication the parent or

person in parental relation best understands within five (5) days of such final determination.

(7) If the LPT determines that the student with a disability may have second language acquisition needs, the student shall take the initial English language proficiency identification assessment. The CSE shall determine, in accordance with the individualized education program (IEP) developed for such student pursuant to Part 200 of this Title, whether the student shall take the assessment with or without testing accommodations or an alternate assessment as may be prescribed by the commissioner.

#### **154-3.4 Exit Criteria for Students with Disabilities.**

(a) Each school district will annually determine if a student with a disability who has been identified as an English Language Learner pursuant to section 154-3.3 of this Subpart will continue to be identified as an English Language Learner.

(b) Following the initial identification of a student with a disability as an English Language Learner, the CSE shall annually make an individual determination as to which of the following methods of assessment shall be used to determine if such student will continue to be identified as an English Language Learner:

- (1) the annual English language proficiency assessment without the use of testing accommodations; or
- (2) the annual English language proficiency assessment with appropriate testing accommodations to be provided in accordance with the individualized education program (IEP) developed for such student pursuant to Part 200 of this Title; or
- (3) an alternate assessment as may be prescribed by the commissioner.