

CHAPTER 15

BILINGUAL EDUCATION

Authority

N.J.S.A. 18A:1-1, 18A:4-15, 18A:7F-4 and 18A:35-15 to 26;
and P.L. 1991, c.12, P.L. 1995, c.59 and P.L. 1995, c.327.

Source and Effective Date

R.2003 d.388, effective September 8, 2003.
See: 35 N.J.R. 1500(a), 35 N.J.R. 4718(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 15, Bilingual Education, expires on March 7, 2009. See: 40 N.J.R. 2161(a).

Chapter Historical Note

Chapter 15, Bilingual Education, was adopted as new rules by R.1998 d.335, effective July 6, 1998. See: 30 N.J.R. 1249(a), 30 N.J.R. 2472(a).

Chapter 15, Bilingual Education, was readopted as R.2003 d.388, effective September 8, 2003. See: Source and Effective Date. See, also, section annotations.

Law Review And Journal Commentaries

Toward parity in education: Abbott v. Burke and the future of New Jersey school systems. 5 Temp.Pol. & Civ.Rts.L.Rev. 183 (1996).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 6A:15-1.1 General requirements
- 6A:15-1.2 Definitions
- 6A:15-1.3 Identification of eligible limited English proficient (LEP) students
- 6A:15-1.4 Bilingual programs for limited English proficient students
- 6A:15-1.5 Waiver process provided by statute
- 6A:15-1.6 Approval procedures
- 6A:15-1.7 Supportive services
- 6A:15-1.8 Inservice training
- 6A:15-1.9 Certification
- 6A:15-1.10 Bilingual, ESL and English language services program enrollment, assessment, exit and reentry
- 6A:15-1.11 Graduation requirements for limited English proficient students
- 6A:15-1.12 Location
- 6A:15-1.13 Notification
- 6A:15-1.14 Joint programs
- 6A:15-1.15 Parental involvement
- 6A:15-1.16 State advisory committee on bilingual education

SUBCHAPTER 1. GENERAL PROVISIONS

6A:15-1.1 General requirements

(a) The purpose of this chapter is to:

1. Ensure that all limited English proficient (LEP) students as defined in this chapter are provided with a free, appropriate public education as defined in N.J.S.A. 18A:35-15 to 26;

2. Ensure that the rights of LEP students are protected;
3. Ensure the provision of bilingual education and related services;
4. Assist district boards of education in providing educational services to LEP students; and
5. Ensure the evaluation of the effectiveness of the education of limited English proficient students.

(b) The rules of this chapter shall apply to all district boards of education providing funded educational programs and services to LEP students.

(c) The Office of Specialized Populations established in the Department of Education (Department) shall:

1. Administer the provisions of this chapter;
2. Provide technical assistance to each district board of education in the implementation of their bilingual, ESL, and English language services programs; 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 limited English proficient students.

Amended by R.2003 d.388, effective October 6, 2003.
See: 35 N.J.R. 1500(a), 35 N.J.R. 4718(a).

In (c), substituted "Specialized Populations" for "Bilingual Education".

6A:15-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Act" means P.L. 1974, c.197 (N.J.S.A. 18A:35-15 to 26).

"Bilingual education program" means a full-time program of instruction in all those courses or subjects which a child is required by law or rule to receive, given in the native language of the limited English proficient students enrolled in the program and also in English; in the aural comprehension, speaking, reading, and writing of the native language of the limited English proficient students enrolled in the programs, and in the aural comprehension, speaking, reading and writing of English; and in the history and culture of the country, territory or geographic area which is the native land of the parents of limited English proficient students enrolled in the program, and in the history and culture of the United States. All students in bilingual education programs receive English as a second language instruction.

"Bilingual part-time component" means a program alternative in which students are assigned to mainstream English program classes, but are scheduled daily for their developmental reading and mathematics instruction with a certified bilingual teacher.

“Bilingual resource program” means a program alternative in which students receive daily instruction from a certified bilingual teacher in identified subjects and with specific assignments on an individual student basis.

“Bilingual tutorial program” means a program alternative in which students are provided one period of instruction from a certified bilingual teacher in a content area required for graduation and a second period of tutoring in other required content areas.

“Dual language bilingual education program” means a full-time program of instruction in elementary and secondary schools which provides structured English language instruction and instruction in a second language in all content areas for LEP students and for English speaking students enrolled in the program.

“Educational needs” means the particular educational requirements of students of limited English proficiency, the fulfillment of which will provide them with equal educational opportunities.

“English as a second language (ESL) program” means a daily developmental second language program of up to two periods of instruction based on student needs which 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.

“English language fluency” means the ability to speak the language with sufficient structural accuracy; to use vocabulary to participate effectively in most formal and informal conversations on practical, social and school topics; to read material for information; and to complete forms and write essays and reports on familiar topics. Language fluency is not the same as language proficiency, which is the full command of language skills.

“English language proficiency test” means a test which measures English language skills in the areas of aural comprehension, speaking, reading and writing.

“English language services” means services designed to improve the English language skills of students of limited English proficiency. These services, provided in district boards of education with less than 10 students of limited English proficiency, are in addition to the regular school program and have as their goal the development of aural comprehension, speaking, reading and writing skills in English.

“ESL Standards for Pre-K through 12 Students” means the standards and language competencies limited English proficient students in pre-K programs and elementary and sec-

ondary schools need to become fully proficient in English and to have unrestricted access to grade appropriate instruction in challenging academic subjects. The standards were developed by Teachers of English to Speakers of Other Languages, Inc. (TESOL) in 1996. The address to obtain these standards is: Teachers of English to Speakers of Other Languages, Inc., 1600 Cameron Street, Suite 300, Alexandria, VA 22314-2751.

“Exit criteria” means the criteria which must be applied before a student may be exited from a bilingual, ESL, or English language services education program.

“High-intensity ESL program” means a program alternative in which students receive two or more class periods a day of ESL instruction. One period is the standard ESL class, and the other period is a tutorial or ESL reading class.

“Instructional program alternative” means a part-time program of instruction that may be established by a district board of education in consultation with and approval of the Department of Education. All students in an instructional program alternative receive English as a second language.

“Limited English proficient (LEP) students” means students from pre-kindergarten through grade 12 whose native language is other than English and who have sufficient difficulty speaking, reading, writing or understanding the English language as measured by an English language proficiency test, so as to be denied the opportunity to learn successfully in the classrooms where the language of instruction is English. This term means the same as limited English speaking ability, the term used in N.J.S.A. 18A:35-15 to 26.

“Native language” means the language first acquired by the student, the language most often spoken by the student, or the language most often spoken in the student’s home, regardless of the language spoken by the student.

“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. Where parents are separated or divorced, parent means the person(s) who has legal custody of the student, provided such parental rights have not been terminated by a court of appropriate jurisdiction.

“Review process” is the process established by the district board of education to assess limited English proficient students for exit from bilingual, ESL, or English language services programs.

Amended by R.2003 d.388, effective October 6, 2003.

See: 35 N.J.R. 1500(a), 35 N.J.R. 4718(a).

Amended “Standards” for “standards” and “Pre-K” for “pre-K”.

6A:15-1.3 Identification of eligible limited English proficient (LEP) students

(a) The district board of education shall determine the native language of each LEP student at the time of enrollment. Each district board of education shall:

1. Maintain a census indicating all students identified whose native language is other than English; and
2. Report annually to the Department as part of the Fall Report, the number of all LEP students identified in the census whose native language is other than English and, of that group, the number who are LEP students.

(b) The district board of education shall develop a screening process to determine which students, of those whose native language is other than English, must be tested to determine English language proficiency. This prescreening shall be conducted by a bilingual/ESL or other certified teacher and shall be designed to distinguish those students that are fluent English speakers, from those whose English speech and comprehension are affected by language proficiency.

(c) The district board of education shall determine the English language proficiency of all kindergarten to 12th grade students, who are not screened out, whose native 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 as well as standardized tests in English and reviewing the input of teaching staff members responsible for the educational program for the limited English proficient students. Those students who do not meet the Department standard on a Department-approved language proficiency test and who have at least one other indicator, are students of limited English proficiency. The district board of education shall also use age appropriate assessment instruments to identify the English language proficiency and readiness of preschool LEP students to determine individual student eligibility for bilingual, ESL or mainstream classroom instruction.

(d) The district board of education shall administer a language proficiency test approved by the Department to all limited English proficient students who enter New Jersey schools after grade eight at the time of enrollment to determine their level of English language fluency.

6A:15-1.4 Bilingual programs for limited English proficient students

(a) The district board of education shall provide all kindergarten to 12th grade LEP students enrolled in the district pursuant to N.J.S.A. 18A:7F-4 with all required courses and support services defined in (b) through (h) below to prepare LEP students to meet the Core Curriculum Content Standards for high school graduation. All district boards of education shall also provide appropriate instructional programs to eligible prekindergarten LEP students based on need according to N.J.A.C. 6A:15-1.3(b). This may also include tutoring,

after school programs, summer programs and remedial services as needed by LEP students.

(b) The district board of education shall establish English language services designed to improve the English language proficiency of LEP students whenever there are one or more, but fewer than 10 LEP students enrolled within the schools of the district. English language services shall be in addition to the regular school program.

(c) The district board of education shall establish an ESL program that provides up to two periods of ESL instruction based on student needs whenever there are 10 or more LEP students enrolled within the schools of the district.

1. An ESL curriculum that addresses the Core Curriculum Content Standards and the ESL standards for Pre-K through 12 Students, incorporated herein by reference, as amended and supplemented, shall be developed and adopted by the district board of education to address the instructional needs of LEP students.

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

(d) The district board of education shall establish bilingual education programs whenever there are 20 or more limited English proficient students in any one language classification enrolled in the district, pursuant to N.J.S.A. 18A:35-18. Bilingual education programs shall:

1. Be designed to prepare LEP students to acquire sufficient English skills and content knowledge to meet the Core Curriculum Content Standards. All LEP students participating in bilingual programs must also receive ESL instruction;

2. Include a bilingual program curriculum that addresses the Core Curriculum Content Standards, the ESL Standards for Pre-K through 12 Students and the use of two languages. The bilingual education curriculum shall be adopted by the district board of education; 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.

(e) Limited English proficient students shall be provided with equitable instructional opportunities to participate in all non-academic courses necessary to meet the Core Curriculum Content Standards including comprehensive health and physical education, the visual and performing arts and career awareness programs. These instructional opportunities shall be designed to assist LEP students to fully comprehend all subject matter and demonstrate their mastery of the content matter.

(f) The district board of education shall offer sufficient courses and other relevant supplemental instructional oppor-

tunities in grades nine through 12 to enable LEP students to meet the Core Curriculum Content Standards for graduation. When sufficient numbers of students are not available to form a bilingual class in a subject area, plans shall be developed in consultation with and approved by the Department to meet the needs of the students.

(g) In addition to (a) through (f) above additional programs and services shall be designed to meet the special needs of eligible LEP students 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.

(h) A district board of education may establish dual language bilingual education programs in the schools and may make provisions for the coordination of instruction and services with the district's World Languages program. Such programs of dual language bilingual education 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. Instruction shall, to the extent necessary, be in all courses or subjects of study which shall allow students to meet all grade promotion and graduation standards. Where possible classes in these dual language bilingual programs shall be comprised of approximately equal numbers of students of limited English proficiency and of students whose native language is English.

(i) The district board of education may establish a program in bilingual education for any language classification with fewer than 20 pupils.

Amended by R.2003 d.388, effective October 6, 2003.

See: 35 N.J.R. 1500(a), 35 N.J.R. 4718(a).

Amended N.J.S.A. references in (a) and (d).

6A:15-1.5 Waiver process provided by statute

(a) A district may request a waiver from N.J.A.C. 6A:15-1.4(d) to establish an instructional program alternative on an annual basis with the approval of the Department of Education when there are 20 or more students eligible for the bilingual education program in grades kindergarten through 12, and the district is able to demonstrate that due to the age range, grade span and/or geographic location of eligible students, it would be impractical to provide a full-time bilingual program.

1. Instructional program alternatives shall be developed in consultation with and approved annually by the Department of Education after review of students enrollment and achievement data. All bilingual instructional program alternatives shall be designed to assist LEP students to develop sufficient English skills and subject matter skills to meet the Core Curriculum Content Standards.

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 and the high-intensity ESL program.

3. District boards of education implementing program alternatives shall submit annually, student enrollment and achievement data that demonstrate the continued need for these programs.

4. A district board of education may not request a waiver when the number of LEP students increases in one language group to the point where the district can establish two or more self-contained or subject area classes in two consecutive grades within any one school in the district, the local board of education shall establish a full-time bilingual education program for that language group.

Case Notes

Waiver requested under N.J.S.A. 18A:35-18(b) from the requirement of a full-time program of bilingual education is not required to apply district-wide; a requirement of district-wide uniformity would be contrary to both sound educational policy and the legislative intent to provide flexibility to districts. Executive Committee of Vineland School District's Parent Advisory Committee v. Bd. of Educ. of Vineland, OAL Dkt. No. EDU 6143-05 and EDU 6428-05 (CONSOLIDATED), Commissioner's Decision (June 26, 2006).

N.J.A.C. 6A:15-1.5(a)4 does not act to preclude waiver anywhere in the district when two bilingual classes can be established in any two consecutive grades in any one district school. Executive Committee of Vineland School District's Parent Advisory Committee v. Bd. of Educ. of Vineland, OAL Dkt. No. EDU 6143-05 and EDU 6428-05 (CONSOLIDATED), Commissioner's Decision (June 26, 2006).

Waiver granted by the Department of Education permitting a board of education to provide an alternative program rather than a full-time bilingual program to third- and fourth-grade students at a particular school because of the low number of limited English proficient (LEP) students in those grades could not be upheld, where the Department did not take into account the overall configuration of the district's LEP population, including, for example, whether the students in question could reasonably be assigned to a different school, and where the Board's desire to implement the program was rooted in educational philosophy rather than the impracticality of providing the traditional full-time program, as required under N.J.S.A. 18A:35-18(b). Executive Committee of Vineland School District's Parent Advisory Committee v. Bd. of Educ. of Vineland, OAL Dkt. No. EDU 6143-05 and EDU 6428-05 (CONSOLIDATED), Commissioner's Decision (June 26, 2006).

Where a waiver granted under N.J.S.A. 18A:35-18(b) was overturned, the matter was remanded to determine whether the alternative program in question complied with statutory and regulatory requirements for full-time bilingual education and to consider the merits of petitioners' allegations of violation of State requirements for parent involvement and maintenance of a parent advisory committee on bilingual education; however, allegations based on the No Child Left Behind Act are not justiciable by the Commissioner of Education. Executive Committee of Vineland School District's Parent Advisory Committee v. Bd. of Educ. of Vineland, OAL Dkt. No. EDU 6143-05 and EDU 6428-05 (CONSOLIDATED), Commissioner's Decision (June 26, 2006).

6A:15-1.6 Approval procedures

(a) Each school district providing a bilingual program, ESL program or English language services shall submit a plan every three years to the Department of Education for approval.

1. Plans submitted by each district board of education for approval shall include information on the following:

- i. Identification of students;
- ii. Program description;
- iii. Bilingual and ESL curriculum development
- iv. Evaluation design; and
- v. Review process for exit.

(b) Each district board of education shall submit annually:

1. Data on the number of LEP students served;

2. Data on the number of certified staff hired for the program;

3. Evaluation data which shall include achievement information in ESL, and data on the performance of eligible LEP students on the fourth grade, eighth grade and 11th grade tests;

4. Exit data for the LEP students enrolled in the district; and

5. A budget for the bilingual and ESL program or English language services. The budget shall indicate how the bilingual categorical aid funds are directly related to the bilingual/ESL program instructional services and materials.

(c) The Office of Specialized Populations will establish procedures for monitoring and evaluation of district bilingual/ESL programs that may include program implementation, program improvement, student performance, teacher certification and curriculum.

Amended by R.2003 d.388, effective October 6, 2003.
See: 35 N.J.R. 1500(a), 35 N.J.R. 4718(a).

In (c), substituted "Specialized Populations" for "Bilingual Education".

6A:15-1.7 Supportive services

(a) 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.

(b) The district board of education may use bilingual personnel on a full or part-time basis to provide supportive services, such as counseling, tutoring and career guidance to LEP students. To the extent that it is administratively feasible, supportive services should be provided by personnel who are familiar with and knowledgeable of the unique needs and background of the LEP students and their parents.

Amended by R.2003 d.388, effective October 6, 2003.
See: 35 N.J.R. 1500(a), 35 N.J.R. 4718(a).

In (b), inserted "it" preceding "is administratively feasible".

6A:15-1.8 Inservice training

(a) The district board of education shall develop a plan for inservice training for bilingual, ESL and mainstream teachers based on their needs and to include instructional strategies to help LEP students meet the Core Curriculum Content Standards and the ESL Standards for Pre-K through 12 Students. All bilingual and ESL teachers shall receive training in the use of the ESL curriculum.

(b) The Professional Improvement Plan of the Annual Report (N.J.S.A. 18A:7A-11(e)) shall include the needs of bilingual and ESL teachers that shall be addressed through inservice training.

6A:15-1.9 Certification

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

(b) All teachers of ESL classes shall hold a valid New Jersey certificate in English as a second language (ESL) pursuant to N.J.S.A. 18A:6-38 et seq. and N.J.A.C. 6:11-6.2.

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

Case Notes

Dismissal of basic skills instructor due to lack of bilingual education endorsement affirmed. Board of Education of the City of Passaic County v. Gonzales, 97 N.J.A.R.2d (EDU) 488.

6A:15-1.10 Bilingual, ESL and English language services program enrollment, assessment, exit and reentry

(a) All LEP students from pre-kindergarten through grade 12 shall be enrolled in the bilingual, ESL or English language services education program established by the school district board of education as prescribed in N.J.A.C. 6A:15-1.4(b) through (e) and 1.5(a), and P.L. 1995, c.59 and c.327.

(b) LEP students enrolled in the bilingual, ESL, or English language services program shall be placed in a monolingual English program when they have demonstrated readiness to function successfully in an English only program. The process to determine the readiness or inability of the individual student to function successfully in the English only program shall be initiated by the student's level of English proficiency as measured by a Department established standard on an English language proficiency test, and the readiness of the student shall be further assessed on the basis of multiple indicators which shall, at a minimum, include classroom performance, the student's reading level in English, the judgment of the teaching staff member or members responsible for the educational program of the student, and performance on achievement tests in English according to P.L. 1991, c.12.

(c) A parent or guardian may remove a student who is enrolled in a bilingual education program pursuant to provisions in P.L. 1995 c.327.

(d) Students enrolled in the bilingual, ESL or English language services program shall be assessed annually to determine their progress in achieving English language proficiency goals and readiness for exiting the program.

(e) Newly exited students who are not progressing in the mainstream English program may be considered for reentry to bilingual and ESL programs as follows:

1. After a minimum of one full semester and within two years of exit, the mainstream English classroom teacher, with the approval of the principal, may recommend retesting.

2. A waiver of the minimum time limitation may be approved by the county superintendent upon request of the chief school administrator if the student is experiencing extreme difficulty in adjusting to the mainstream program.

3. The recommendation for retesting shall be based on the teacher's judgment that the student is experiencing difficulties due to problems in using English as evidenced by the student's inability to: communicate effectively with

peers and adults; understand directions given by the teacher; and/or comprehend basic verbal and written materials.

4. The student shall be tested using a different form of the test or a different language proficiency test than the one used to exit the students.

5. If the student scores below the State established standard on the language proficiency test, the student shall be reenrolled into the bilingual or ESL program.

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

Amended by R.2003 d.388, effective October 6, 2003.
See: 35 N.J.R. 1500(a), 35 N.J.R. 4718(a).
Rewrote (d); in (f), amended N.J.A.C. reference.

6A:15-1.11 Graduation requirements for limited English proficient students

All limited English proficient students must satisfy requirements for high school graduation according to N.J.A.C. 6A:8-5.1(a).

Amended by R.2000 d.358, effective September 5, 2000.
See: 32 N.J.R. 1712(a), 32 N.J.R. 3332(b).
Updated N.J.A.C. reference.
Amended by R.2003 d.388, effective October 6, 2003.
See: 35 N.J.R. 1500(a), 35 N.J.R. 4718(a).
Rewrote the section.

6A:15-1.12 Location

All bilingual, ESL, and English language services programs shall be conducted within classrooms approved by the county superintendent of schools within the regular school buildings of the district per N.J.S.A. 18A:35-20.

6A:15-1.13 Notification

(a) Each district board of education shall notify by mail the parents of LEP students of the fact that their child has been identified as eligible for enrollment in a bilingual, ESL, or English language services education program. Such notice shall include the information that the parents have the option of declining enrollment of their child in a bilingual program, and they shall be given an opportunity to decline enrollment if they so choose. The notice shall be in writing and in the language of which the child of the parents so notified possesses a primary speaking ability, and in English. In addition, whenever a district determines, on the basis of a student's level of English proficiency, that a student should exit from a program of bilingual education, the district shall notify the parents of the student by mail.

(b) Each district board of education shall send progress reports to parent(s) of students enrolled in bilingual, ESL, or English language services programs in the same manner and frequency as progress reports are sent to parent(s) of other students enrolled in the school district.

(c) Progress reports shall be written in English and in the native language of the parent(s) of students enrolled in the bilingual and ESL program unless it can be demonstrated and documented in the annual plan required in N.J.A.C. 6A:15-1.6(c) that this requirement would place an unreasonable burden on the district board of education.

(d) Each district board of education shall notify the parent(s) when students meet the exit criteria and are 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 Joint programs

A school district may join with any other district board of education with the approval of the county superintendent of schools on a case by case basis to provide bilingual, ESL or English language services programs.

6A:15-1.15 Parental involvement

(a) Each district board of education shall provide for the maximum practicable involvement of parent(s) of limited English proficient students in the development and review of program objectives and dissemination of information to and from the boards of education and communities served by the bilingual, ESL, or English language services education program.

(b) Each district board of education implementing a bilingual education program shall establish a parent advisory committee on bilingual education on which the majority will be parent(s) of students of limited English proficiency.

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

(a) The State Board of Education shall establish a State advisory committee on bilingual education. The Commissioner of Education shall appoint the members of the committee with representation from parents, institutions of higher education, bilingual and ESL teachers, school board members, school administrators and lay persons.

(b) The committee shall advise the Department of Education in the formulation of policies and procedures relating to the Act.