

## R 2423 BILINGUAL AND ESL EDUCATION

### A. Definitions (N.J.A.C. 6A:15-1.2)

1. “Alternate English language proficiency assessment” (alternate ELP assessment) means a New Jersey Department of Education-approved assessment for students with the most significant cognitive disabilities that assesses 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 Every Student Succeeds Act (ESSA) and the Individuals with Disabilities Education Act (IDEA).
2. “Bilingual education program” means a full-time program of instruction in all courses or subjects that a child is required by law or rule to receive, given in the native language of English language learners (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.
3. “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.
4. “Bilingual resource program” means a program alternative in which students receive, on an individual basis, daily instruction from a certified bilingual teacher in identified subjects and with specific assignments.
5. “Bilingual tutorial program” means a program alternative in which students receive 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.
6. “Dual-language bilingual education program” 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 ELLs and for native English speaking students enrolled in the program.



7. "Educational needs" means the particular educational requirements of ELLs; the fulfillment of which will provide them with equal educational opportunities.
8. "English as a second language (ESL) program" 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.
9. "English language development standards" 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 ([www.wida.us](http://www.wida.us)) and are available for review at <http://www.wida.us/standards/eld.aspx>.
10. "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.
11. "English language proficiency assessment" (ELP assessment) means a New Jersey Department of Education-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 ESSA.
12. "English language services" means services designed to improve the English language skills of ELLs. The services, provided in school districts with less than ten ELLs, are in addition to the regular school program and are designed to develop aural comprehension, speaking, reading, and writing skills in English.



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13. "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.
  14. "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.
  15. "Instructional program alternative" means a part-time program of instruction that may be established by a Board of Education in consultation with and approval of the New Jersey Department of Education (Department). All students in an instructional program alternative receive English as a second language.
  16. "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.
  17. "NJSLS" means the New Jersey Student Learning Standards as defined in N.J.A.C. 6A:8-1.3.
  18. "Parent(s)" for the purposes of Policy 2423 and this Regulation 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.
  19. "Review process" means the process established by the Board to assess ELLs for exit from bilingual, ESL, or English language services programs.
  20. "Sheltered English instruction" 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.
- B. Identification of Eligible English Language Learners (ELLs) (N.J.A.C. 6A:15-1.3)
1. The district shall use a multi-step process at the time of enrollment to determine the native language of each ELL. The district shall:



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- a. Maintain a census indicating all identified students whose native language is other than English; and
  - b. Administer the Statewide home-language survey to determine which students in Kindergarten to grade twelve whose native language is other than English must be screened further to determine English language proficiency. The Statewide home-language survey 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.
2. The district shall determine the English language proficiency of all Kindergarten to grade twelve students who are not screened out and 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, 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 district shall also use age-appropriate methodologies to identify preschool ELLs to determine their individual language development needs.
- C. Bilingual Programs for English Language Learners (ELLs) (N.J.A.C. 6A:15-1.4)
1. The Board shall provide all Kindergarten to grade twelve ELLs enrolled in the district pursuant to N.J.S.A. 18A:7F-46 with all required courses and support services outlined in N.J.A.C. 6A:15-1.4 (b) through (h) and C.2. through C.8. below to prepare ELLs to meet the NJSLs for high school graduation. This may include tutoring, after-school programs, summer programs, and remedial services as needed by ELLs. The district shall also provide appropriate instructional programs to eligible pre-school 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 Board shall establish English language services designed to improve the English language proficiency of ELLs whenever there are at least one, but fewer than, ten ELLs enrolled in the school district. English language services shall be provided in addition to the regular school program.



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3. The Board shall establish an ESL program that provides at least one period of ESL instruction based on student language proficiency whenever there are ten or more ELLs enrolled in the school district.
  - a. An ESL curriculum that addresses the WIDA English language development standards shall be developed and adopted by the Board to address the instructional needs of ELLs.
  - b. 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 taught.
4. The Board shall establish bilingual education programs whenever there are twenty or more ELLs in any one language classification enrolled in the school district pursuant to N.J.S.A. 18A:35-18. Bilingual education programs shall:
  - a. Be designed to prepare ELLs to acquire sufficient English skills and content knowledge to meet the NJSLS. All ELLs participating in the bilingual programs shall also receive ESL instruction;
  - b. Include a curriculum that addresses the NJSLS, the WIDA English language development standards, and the use of two languages. The bilingual education curriculum shall be adopted by the Board; and
  - c. 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.
5. 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 the content matter.
6. The Board shall offer sufficient courses and other relevant supplemental instructional opportunities in grades nine through twelve to enable ELLs to meet the NJSLS for graduation. When sufficient numbers of students are not available to form a bilingual class in a subject area, the Board shall develop plans in consultation with and approved by the Department to meet the needs of the students.



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7. In addition to N.J.A.C. 6A:15-1.4(a) through (f) and C.1. through C.6. above, the Board shall design additional programs and services to meet the special needs of eligible ELLs 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.
  8. The Board 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.
  9. The Board may establish a program in bilingual education for any language classification with fewer than twenty students.
- D. Waiver Process Provided by Statute (N.J.A.C. 6A:15-1.5)

The school district may request a waiver from N.J.A.C. 6A:15-1.4(d) and C.4. above to establish annually an instructional program alternative with the approval of the Department when there are twenty or more students eligible for the bilingual education program in grades Kindergarten through twelve, and the school district is able to demonstrate that it would be impractical to provide a full-time bilingual program due to 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.



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3. In the event the district implements program alternatives, the district shall annually submit student enrollment and achievement data that demonstrate the continued need for the programs.
- E. Approval Procedures (N.J.A.C. 6A:15-1.6)
1. If the district provides a bilingual program, ESL program, or English language services, the district shall submit a plan every three years to the Department for approval. At its discretion, the Department may request modifications, as appropriate.
    - a. Plans submitted by the Board for approval shall include information on the following:
      - (1) Identification of students;
      - (2) Program description;
      - (3) The number of certified staff hired for the program;
      - (4) Bilingual and ESL curriculum development;
      - (5) Evaluation design;
      - (6) Review process for exit; and
      - (7) A budget for bilingual and ESL programs or English language services.
- F. Supportive Services (N.J.A.C. 6A:15-1.7)
1. Students enrolled in bilingual, ESL, or English language services programs shall have full access to educational services available to other students in the school district.
  2. 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.



G. In service Training (N.J.A.C. 6A:15-1.8)

1. The Board shall 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 plan shall include instructional strategies and appropriate assessments to help ELLs meet the NJSLS and the WIDA English language development standards. All bilingual and ESL teachers shall receive training in the use of the ESL curriculum.
2. The Professional Development Plan of the school district shall include the needs of bilingual and ESL teachers, which shall be addressed through in service training.

H. Certification (N.J.A.C. 6A:15-1.9)

1. 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 26.1.
2. All teachers of ESL classes shall hold a valid New Jersey instructional certificate in ESL pursuant to N.J.S.A. 18A:6-38 et seq. and N.J.A.C. 6A:9B-10.5.
3. All teachers providing English Language Services shall hold a valid New Jersey instructional certificate.

I. Bilingual, English as a Second Language, and English Language Services Program Enrollment, Assessment, Exit, and Reentry (N.J.A.C. 6A:15-1.10)

1. All ELLs from Kindergarten through grade twelve shall be enrolled in the bilingual, ESL, or English language services education program established by the Board as prescribed in N.J.A.C. 6A:15-1.4(b) through (e) and 1.5(a), C.2. through C.5. and D. above, and P.L. 1995, c. 59 and c. 327.
2. Students enrolled in the bilingual, ESL, or English language services program shall be assessed annually using ELP assessments to determine their progress in achieving English language proficiency goals and readiness for exiting the program. 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.





3. ELLs enrolled in the bilingual, ESL, or English language services program shall be placed in a monolingual English program when they have demonstrated readiness to exit a bilingual, ESL, or ELS program through Department-established criteria on an 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 of the teaching staff member or members responsible for the educational program of the student; and performance on achievement tests in English.
  - a. Pursuant to C.F.R. §200.6(h)(4)(ii), an ELL 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 status based on the student's score on the remaining domains in which the student was assessed.
4. A parent may remove a student who is enrolled in a bilingual education program pursuant to provisions in N.J.S.A. 18A:35-22.1.
5. Newly exited students who are not progressing in the mainstream English program may be considered for reentry to bilingual and ESL programs as follows:
  - a. After a minimum of one-half an academic year and within two years of exit, the mainstream English classroom teacher may recommend retesting with the approval of the Principal.
  - b. A waiver of the minimum time limitation may be approved by the Executive County Superintendent upon request of the Superintendent if the student is experiencing extreme difficulty in adjusting to the mainstream program.
  - c. 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.



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- d. 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 student.
  - e. If the student scores below the State-established standard on the language proficiency test, the student shall be re enrolled into the bilingual or ESL program.
6. When the review process for exiting a student from a bilingual, ESL, or English language services program has been completed, the district shall notify by mail the student's parent(s) of the placement determination. If the parent(s) or teaching staff member disagrees with the placement, they may appeal the placement decision in writing to the Superintendent or designee, who will provide a written explanation for the decision within seven working days of receiving the written appeal. The complainant may appeal this decision in writing to the Board within seven calendar days of receiving the Superintendent's or designee's written explanation of the decision. The Board will review the appeal and respond in writing to the parent within forty-five calendar days of the Board's receipt of the parent's written appeal to the Board. Upon exhausting an appeal to the Board, the complainant may appeal to the Commissioner of Education pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6A:3.
- J. Graduation Requirements for English Language Learners (N.J.A.C. 6A:15-1.11)
- All ELLs shall satisfy requirements for high school graduation according to N.J.A.C. 6A:8-5.1(a).
- K. Location (N.J.A.C. 6A:15-1.12)
- All bilingual, ESL, and English language services programs shall be conducted within classrooms within the regular school buildings of the school district pursuant to N.J.S.A. 18A:35-20.
- L. Notification (N.J.A.C. 6A:15-1.13)
1. The school district shall 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 district shall issue the notification within thirty days of the child's identification. 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. 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:



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- a. Why the student was identified as an ELL;
  - b. Why the student needs to be placed in a language instructional educational program that will help them develop and attain English proficiency and meet the NJSLS;
  - c. The student's level of English proficiency, how the level of English proficiency was assessed, and the student's academic level;
  - d. 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;
  - e. How the program will meet the student's specific needs in attaining English and meeting State standards;
  - f. 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; and
  - g. How the instructional program will meet the objectives of the individualized education program of a student with a disability.
2. The school district shall send progress reports to parent(s) of students enrolled in a 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.
  3. 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 the school district 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.
  4. The school district 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.



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M. Joint Programs (N.J.A.C. 6A:15-1.14)

With approval of the Executive County Superintendent on a case-by-case basis, a school district may join with another Board to provide bilingual, ESL, or English language services programs.

N. Parental Involvement (N.J.A.C. 6A:15-1.15)

1. The district shall provide for the maximum practicable involvement of parent(s) of ELLs 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.
2. If the district implements a bilingual education program, the district shall establish a parent advisory committee on bilingual education of which the majority membership shall be parent(s) of ELLs.

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