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## THE STATE OF OUR ART

### NYS CR Part 154, Revised and in Practice

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With the recent revisions to CR-154 in New York State, schools that serve ELLs face new mandates. The New York State Department of Education (NYSED) revised regulations for programs that support English language learners (ELLs) in 2014. These regulations are known in the field as Commissioners Regulations Part 154 (CR-154). This article applauds many of the revisions while examining the challenges that have arisen from the rapid implementation of the policy. Particular attention is paid to students, ESL/ENL and content area teachers, and schools in which the new regulations in CR-154 have proven to be prohibitively difficult, often at the expense of a quality education for our multilingual learners.

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**Although** the education of all students in schools across our country is affected by laws at the federal, state, and local levels, it appears that the education of English language learners (ELLs, now also termed multilingual learners, or MLLs, in New York State) has gotten the most recent media attention. This is unsurprising, as the topic of educating ELLs and integrating English language learning into the schools is closely tied to sociopolitical issues of immigration and socio/economic inequality. During political campaigns, these topics are particularly newsworthy and spark passionate debate.

In 2014, we celebrated the fortieth anniversary of the landmark civil rights lawsuit *Lau v. Nichols*, which was more specifically a case of language rights. Under the U.S. Constitution, this was the first lawsuit that brought to the forefront the belief that children who do not speak English have a right to unique assistance in public schools.

Since 1974, the constitutional rights of our ELLs have been well established, and indeed, there have been further lawsuits to demonstrate this point (e.g., *Aspira Consent Decree*, as a result of *Aspira v. New York* in 1975; *Rios v. Reed* in 1978; *Castenada v. Pickard* in 1981; *Flores v. Arizona* and *Williams v. California* in 2004). There is no satisfactory way, however, to ensure that the federal, state, or local offices of education respect these rights without evidence of their implementation of the most updated, research-based instructional programs for these students. In fact, "English language learner" or "multilingual learner" is in itself an umbrella term within which exist diverse language proficiencies, literacy levels, and, perhaps most important, life stories. How to meet the needs of each multilingual learner is a daunting task, with no one-size path to success.

Today, each state mandates how ELLs will be educated and assessed in their schools. In New York State, this regulation is set forth in Commissioners Regulation Part 154 (CR-154): "The purpose of CR-Part 154 is to ensure that ELLs are provided with appropriate and equitable educational programs and services so they may attain the highest level of academic success and English language proficiency."

A major component of CR-154 is that stated in §143-1.3(a): “. . . each school district shall develop a comprehensive plan to meet the educational needs of students who are English Language Learners. Such plan shall be kept on file in the district and made available for department review upon request of the department.”

In addition, the New York State Education Department (NYSED) has made an effort to enhance and strengthen all programs for ELLs in our state. The *Blueprint for ELL Success* (New York State Education Department, 2014) outlines eight principles that each district must adhere to when considering the educational programs for their ELLs. A previous laudable effort that the NYSED embarked upon, in 2012, was a review of the CR-154 regulations by various stakeholders throughout the state. The rapid increase in our ELL population across New York State required this review.

Though CR-154 had not changed significantly in more than 25 years, New York State’s ELL population and its needs have experienced significant complexities and expansion. Over the past ten years, for instance, ELL student enrollment in New York State has increased by 20 percent.<sup>1</sup> Moreover, as even a cursory glance at the research literature demonstrates, the understanding of best classroom practices for ELLs has also advanced significantly. Indeed, all stakeholders were excited to be included in this timely review of CR-154. Unfortunately, however, most K–12 ESL and BE classroom teachers could not participate, as the meetings were held during the school day, when teachers are doing their essential work in the classroom. Hence, the stakeholders who are essentially on the “front lines” and work daily with ELLs in our schools were, regrettably, not part of the review and changes.

After many meetings and revisions stemming from the review that began in 2012, NYSED’s Office of Bilingual Education/ESL & World Languages and the Board of Regents sent out the proposed amendments for comments from stakeholders in the field. The timing, however, of the dissemination of these revisions and request for feedback was conducted during a period from July to August 2014. Most PK–12 teachers do not teach during the summer months, and might not have regular access to their work email. With such a short window of time for stakeholders to respond to the revisions, and with the timing during summer break, the NYSED did not receive the same number of comments they would typically expect during the school year. The revisions were voted on and accepted by the NYS Regents in early September 2014. At that point, many ENL/BE teachers first saw the revised regulations, which did not necessarily reflect their input from their previous reviews (for a full explanation of the revisions to CR-154, see Eastern Suffolk BOCES [April 2015]).

Fortunately, most of the revisions are excellent, and long overdue. Examples are: (a) not placing ENLs of more than two contiguous grade levels together, (b) requiring professional development for all collaborating teachers, (c) offering alternative pathways for students to exit ESL programs, and (d) mandating meetings with students’ families in their preferred language, among others.

There is, however, much disagreement about the implementation of the revised instructional models in many districts. As of the 2015–2016 school year, school districts were required to provide integrated instruction to ELLs at all proficiency levels, sometimes in addition to the stand-alone instruction that was previously mandated. In the integrated model, a content area teacher and an ENL teacher co-teach, so that ELLs are receiving content-based instruction in the content classroom, with ENL teachers developing language goals and providing language support. Sheltering content, which merges language and text, provides students with meaningful opportunities to engage in authentic communicative tasks with both fellow ELLs and other classmates. It also exposes ELLs to the kind of English that provides students with the linguistic resources necessary to succeed in academic settings. Nevertheless, in order to be successful in the field, the construct of “integration” must be clearly defined, and appropriate resources must be allocated to carry out such instruction. Herein, as we have found, lies the difficulties that are causing frustration in classrooms statewide.

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<sup>1</sup>This figure was reported in a Board of Regents presentation in Spring 2015 by Milady Baez, deputy chancellor, Elieser De Jesus, senior director of ELL instruction and technical support, and Richard Bellis, senior director of policy and compliance.

The challenges are particularly significant in districts with less than 20 students who share the same home language, as well as in districts where ELLs are not a significant population statistically, but, of course, still need and deserve quality programs. Such districts, in fact, comprise the majority of districts in New York State. In these schools, there is often only one ENL teacher, who oversees the progress of all of the ELLs in the district. This teacher is now responsible for co-planning with numerous teachers and being presented in a large number of classrooms districtwide, often creating insurmountable logistical difficulties. Because it is so time-consuming for these teachers to co-plan weekly with each content teacher, it is not uncommon for ENL and content teachers to feel unprepared to teach together, and express frustration at having neither the time nor the resources to seamlessly plan productive instructional time together.

There is also confusion about what the descriptor “integrated” means in describing a program for ELLs. New York State United Teachers (NYSUT) (2015) responded to this confusion with a document to clarify many of the questions and concerns of its local leaders and members. Based on our informal conversations with colleagues in the field, as well as postings on the NYS TESOL listserv, there is still additional frustration and confusion. For instance, some districts interpret “integrated” to be a class of ELLs, former ELLs, and native English speakers in a content class, while other districts interpret it as a classroom comprising ELLs exclusively with the “integration” of one ENL and one content teacher as co-instructors, or a teacher who holds certification in both the ESOL and the content area being taught—really a reworked stand-alone ESL classroom. In fact, actual models of “integrated” classes often vary within the same district, as well as in different buildings. What *has* been made very clear is the need for the revised programs to be content-driven, and for every content objective to have a language objective alongside it.

It is notable that since the 1990s, strong English as a new language (ENL) programs have taught content-based ESL lessons and scheduled students within reasonable grade spans. This is, perhaps, especially the case at the secondary level, which is inherently content-driven due to the Regents exams, now rooted in the Common Core content standards. These successful ENL programs offered curriculum congruent with what the students were learning in their content classes. In these classes, ENL teachers report that students took more risks with their developing communicative competence, felt more at ease asking questions, and were able to learn the necessary content-specific vocabulary before they would need to use it in their content classes.

Before the revised 154 regulations, if the ENL stand-alone class had mixed grades, students would be in one classroom but working on different content classes, making it nearly impossible for the teacher to teach the academic literacy necessary for each content area. In the revised model, though, these students fare no better. They are often placed in classes with native English speakers, with an ENL teacher huddled with them in the content classroom. These students have expressed to the ENL teacher that they no longer feel comfortable asking their questions out loud. For students at the upper levels of proficiency, Transitioning and Expanding, there are no longer any mandated stand-alone ESL classes offered, so many students receive their language instruction in their co-taught classes. In addition, the students are required to analyze and absorb the supplemental instruction from the ENL teacher amid the bustle of the surrounding activity in the content classroom. This adds a layer of challenge and complexity at the practical level.

On the more theoretically pedagogical level, student need in these settings is not met. Without careful co-planning, it is impossible for the ENL teacher to work on a language objective while the content teacher is discussing the causes of the Industrial Revolution or the literary techniques Harper Lee uses in *To Kill a Mockingbird*. It is regrettable, and to the detriment of the students, that ample time to co-plan and sufficient training to co-teach are lacking and were not adequately considered in the CR-154 revisions.

The unhappy result is that many ENL teachers have reported that they, along with their students, have been relegated to the classroom margins, because many administrators without ENL backgrounds or training advocate that the content teacher drives the curriculum. This is not what research describes when speaking of collaborative classrooms or of co-teaching program models. In fact, content teachers in monolingual programs may be unaware of the ways in which the language of instruction is as cognitively challenging for ELLs as the content area they must teach.

As noted above, the dilemma the new revisions to CR-154 have caused on the pedagogical level is mainly in smaller districts or schools throughout our state with fewer than 20 students of the same home language enrolled. Stakeholders may not have examined the most recent research on the complexities of second language acquisition, the importance of funds of knowledge when introducing content, the impact of the trauma students may have experienced in their ability to learn, and the transfer of cognitive academic language proficiency, or CALP (Cummins, 1979), from students' first language to English. Instead, many schools are singularly focused on the issue of compliance with the revised regulations to the neglect of any other instructional needs. Certainly, while we do need a system of monitoring compliance to regulations that were created to ensure equity in education, we first need to have a fundamental knowledge base of why these regulations exist. Without such purpose, it remains unclear how to ensure this knowledge base is established with all educators in our schools.

Many teachers are therefore hearing that their districts do not have the funding to open a bilingual class with only eight ELLs. In addition, many districts did not prepare their faculty with appropriate methodologies in collaborative teaching or offer them a shared planning schedule. Some stand-alone ENL classes have been eliminated in smaller districts, and ENL teachers are now co-teaching with the content area teachers to whom they were assigned. As teachers have attested, collaboration cannot be assigned. Such teaching requires a "buy-in" from the co-teaching team, and opportunities for professional growth. While these programs are in the pioneer years, it would be best to include those content teachers who want an opportunity to work in an integrated setting to become a more reflective teacher as the instructional model is implemented—and yes, to work harder for even greater career satisfaction. When administrators set up a regular time and place for collaborative planning to support ENLs, the district or building shows a commitment to collaboration for their ELLs' success.

Certainly, we do need federal, state, and local regulations to ensure educational equity for all students. However, when districts set up programs that adhere to regulations that do not match the educational needs of its students, we have lost the fundamental reason for having regulations in the first place.

Some rural districts of 1,000 students total may have 29 ELLs, while other districts have three high schools with 1,000 students in each and their ELL population may be as much as 65% of total student enrollment. With such fundamental differences among school districts in our state, NYSED regulations on what type of program will best serve our ELLs must be flexible and specify parameters, perhaps offering a variety of program models to match the variety of demographics throughout our state's school districts. This way, those teachers, parents, and administrators closest to the individual students in their district can choose from research-supported models for creating educational methods that best fit their local setting.

Because this is the second year the newly revised CR-154 regulations are being implemented, this is the time to survey the field and hear from teachers, administrators, policy makers, higher education professors, high school students and their parents to get an inclusive and representative response from those most affected by the new mandates. It is only in this way that appropriate amendments can be made to cover all types of school districts in our state. Such a survey would be much more helpful to our students, give them some ownership of how they learn best, and be much more productive than dwelling on what is not working. NYS TESOL would be glad to be part of such a commitment.

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