

State Education Department

English Language Learners Programs

Report 2022-S-30 | September 2024

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine whether the State Education Department is adequately overseeing whether school districts are providing services to English Language Learners as required. The audit covered the period from July 2019 through November 2023.

About the Program

According to the U.S. Department of Education, there is a well-documented achievement gap between students learning the English language and their English-proficient peers, as demonstrated through lower test scores and lower graduation rates.¹ Ensuring that English Language Learners (ELLs)—students who, by reason of foreign birth or ancestry, speak or understand a language other than English, speak or understand little or no English, and require support to become proficient in English—receive appropriate support to improve English proficiency can result in better academic outcomes and engagement in their communities.

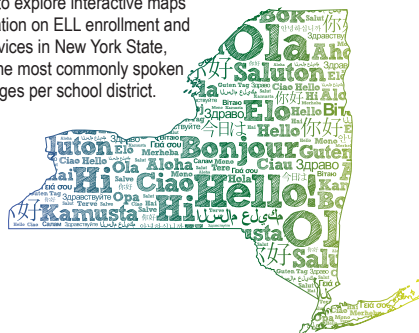
State Education Department (SED) data shows that ELL enrollments are on the rise in New York, with the number of ELL students outside of New York City increasing 8% from 2019-20 to 2022-23.

Part 154 of the Regulations of the Commissioner of Education (Part 154) specifies standards for identifying and providing educational services to ELLs in New York State. Under Part 154, students are generally entitled to receive an education in the school district where they live, regardless of the language they speak. This includes the right to receive all core content instruction and to learn English and other subjects at the same academic level as all other children.

Within SED, the Office of Bilingual Education and World Languages (OBEWL) enforces Part 154 and provides ongoing guidance, professional development, resources, and assistance to school districts on issues related to the education of ELLs.

School districts identify ELLs and the services to which they are entitled through questionnaires, individual interviews, and tests. Districts are required to provide English as a New Language (ENL) services to all eligible ELLs and are required to make Bilingual Education (BE) programs available in all home languages spoken by 20 or more ELLs of the same grade and home language districtwide.

Click here to explore interactive maps and information on ELL enrollment and ENL services in New York State, including the most commonly spoken languages per school district.



1 U.S. Department of Education: *Educational Experiences of English Learners: Access to and Enrollment in Early Learning Programs, Advanced Coursework, and Dual Credit Programs*. Accessed April 2024. <https://www2.ed.gov/datastory/el-experiences>

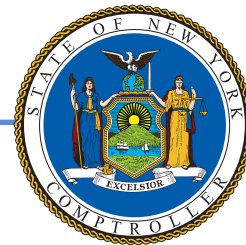
Key Findings

We found that SED needs to improve its oversight and work to remove barriers to ensure school districts are providing the services to which ELLs are entitled. According to SED data, ELL enrollments have risen, putting some students at risk of not receiving instruction at the same academic level as their English-proficient peers and underperforming academically or not graduating from high school. For example:

- Seven of the nine (78%) school districts we visited that required BE programs did not have a program or an exemption from BE requirements for all required languages and grade levels. These nine school districts enrolled 7,317 ELLs entitled to bilingual education; however, 5,632 (77%) students did not have programs available in their home languages and/or grade levels. Further, 23 of 70 (33%) school districts that we visited or that responded to our survey about BE programs did not offer the required programs at any grade level. Eighteen of the 47 that did offer BE programs (38%) did not offer them at the high school level.
- School districts lack certified BE teachers for languages commonly spoken by ELLs, and certification exams are not specifically available in all languages, including Burmese, Karen, Kinyarwanda, Nepali, Somali, and Swahili—languages commonly spoken by ELLs in certain school districts. Further, for districts that reported between one and five ELLs enrolled during the 2021-22 school year, of the 76 that responded that they currently have an ELL student, 21 (28%) indicated that they are relying on teachers who are not certified, citing difficulty attracting staff with the appropriate certification.
- School districts could not provide sufficient documentation to support that 38% of the sampled students received all required ENL services. In addition, districts did not consistently document or retain ELL identification process information, and we found at least one required document missing from 52% of the sampled student cumulative files that we reviewed. District documentation issues extended to data reported to SED, limiting SED's ability to ensure that students are appropriately identified or receiving all required services.
- School districts without required BE programs are not obtaining a Bilingual Education Program Waiver (waiver) from SED. While two districts obtained waivers, an additional seven were eligible for a waiver and did not obtain one as required.
- During our audit scope, OBEWL did not conduct any Building Reviews designed to monitor compliance with Part 154 at individual schools. Building Reviews were suspended due to the COVID-19 pandemic and had not resumed as of the end of our audit fieldwork in November 2023.
- School districts did not always submit accurate or consistent data, affecting OBEWL's ability to effectively monitor school districts' compliance with Part 154 requirements and depriving OBEWL of meaningful information to guide decisions that could improve student performance and professional development and provide needed resources.
- School districts did not always promptly share, or appropriately document and retain, information regarding transfer students. Delayed or missing information regarding ELL transfer students inhibits continuity of services for students adjusting to a new school environment.

Key Recommendations

- Enhance monitoring activities and guidance to ensure school districts:
 - Comply with Part 154.
 - Provide required services.
 - Retain necessary documentation.
- Continue to work with the Board of Regents to increase the number of certified instructors.
- Reinforce waiver requirements for schools not offering BE programs for all applicable home languages and grade levels.
- Work with school districts to help them to obtain and retain required documentation regarding ELL identification and provision of services.
- Resume Building Reviews at school districts in order to monitor compliance with Part 154 in a way that doesn't rely on self-reported information.
- Work with school districts to improve the reliability of program and participation data.
- Provide guidance to school districts to enable efficient sharing of information.



Office of the New York State Comptroller Division of State Government Accountability

September 18, 2024

Betty A. Rosa, Ed.D.
Commissioner
State Education Department
State Education Building
Albany, NY 12234

Dear Dr. Rosa:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *English Language Learners Programs*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
SED	State Education Department	<i>Auditee</i>
Achievement Test	New York State English as a Second Language Achievement Test	<i>Key Term</i>
BE	Bilingual Education	<i>Key Term</i>
BEA	Bilingual Education Assessment	<i>Key Term</i>
BOCES	Boards of Cooperative Educational Services	<i>Key Term</i>
Building Review	Part 154 Building Level Program Review	<i>Key Term</i>
CAP	Corrective action plan	<i>Key Term</i>
Comprehensive Plan	Comprehensive English Language Learner Education Plan	<i>Key Term</i>
ELL	English Language Learner	<i>Key Term</i>
ENL	English as a New Language	<i>Key Term</i>
ESOL	English for Speakers of Other Languages	<i>Key Term</i>
ESSA	Every Student Succeeds Act	<i>Law</i>
Identification Test	New York State Identification Test for English Language Learners	<i>Key Term</i>
IEP	Individualized Education Plan	<i>Key Term</i>
NYSTCE	New York State Teacher Certification Examinations	<i>Key Term</i>
Part 154	Part 154 of the Regulations of the Commissioner of Education	<i>Law</i>
OBEWL	SED's Office of Bilingual Education and World Languages	<i>Office</i>
Questionnaire	Home Language Questionnaire	<i>Key Term</i>
RBERN	Regional Bilingual Education Resource Network	<i>Key Term</i>
SIRS	Student Information Repository System	<i>System</i>
Title III	Title III of the federal Elementary and Secondary Education Act of 1965	<i>Law</i>
Waiver	Bilingual Education Program Waiver	<i>Key Term</i>

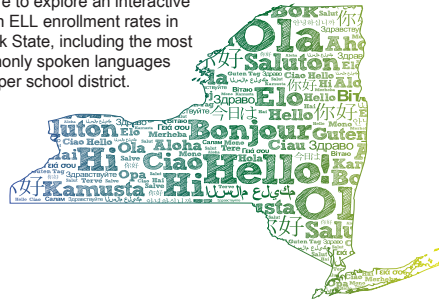
Background

In support of access to specialized programs, the U.S. Department of Education cites an achievement gap between students learning the English language and their English-proficient peers, as demonstrated through lower test scores and lower graduation rates.² New York State Education Department (SED) data validates this gap, showing that, for the 4-year graduation rate as of August 2022, the dropout rate for English Language Learners (ELLs) was 16%. This is an improvement of 6% over the previous year but still notably higher than the average overall dropout rate of 5%. Because a high school diploma is a standard requirement for most jobs and higher education opportunities, graduation or its equivalent is critical to the future of ELLs.

English Language Learners: Students who, by reason of foreign birth or ancestry, speak or understand a language other than English, speak or understand little or no English, and require support to become proficient in English.
(From SED's [Glossary of Terms](#))

SED data also shows that ELL enrollments have risen in New York, with the number of ELL students outside of New York City increasing 8% from 2019-20 to 2022-23. Linguistic isolation is a challenging aspect of transitioning to a new country, and courses provided in their home language can offer additional support to these students as they learn English, providing them with a greater ability to participate in their communities, as well as keep them engaged in school and improve their academic outcomes.

Click here to explore an interactive map on ELL enrollment rates in New York State, including the most commonly spoken languages per school district.



Title III of the federal Elementary and Secondary Education Act of 1965 (Title III), as amended by the Every Student Succeeds Act (ESSA) of 2015, sought to ensure that ELL students attain English language proficiency and meet the same academic standards as their peers. Federal Title III funds are intended to supplement local and State funding of high-quality professional development for schools' instructional programs and teachers, so that they are better prepared to identify and address the needs of ELLs. Education Law §3204 authorizes the Commissioner of Education to establish standards for approved programs for pupils with limited English proficiency. In addition, Part 154 of the Regulations of the Commissioner of Education (Part 154) specifies standards for identifying and providing educational services to ELLs. All State school districts must comply with Part 154, under which students are generally entitled to receive an education in the school district where they live, regardless

² U.S. Department of Education: *Educational Experiences of English Learners: Access to and Enrollment in Early Learning Programs, Advanced Coursework, and Dual Credit Programs*. Accessed April 2024. <https://www2.ed.gov/datastory/el-experiences>

of the language they speak. This includes the right to receive all core content instruction and to learn English and other subjects at the same academic level as all other children.

Within SED, the Office of Bilingual Education and World Languages (OBEWL) enforces Part 154 and provides ongoing guidance, professional development, resources, and assistance to school districts on issues related to the education of ELLs. During the 2021-22 school year, excluding New York City schools and charter schools, OBEWL was responsible for 110,622 ELLs at 573 public school districts with approximately 200 language backgrounds. Additionally, OBEWL oversees the Regional Bilingual Education Resource Networks (RBERNs), which provide developmental and technical support and guidance to school districts with ELL students.

To identify students eligible for ELL services, school districts administer a Home Language Questionnaire (questionnaire) to all new students. Where these assessments indicate that a language other than English is spoken in the home, students are interviewed individually and may be given the New York State Identification Test for English Language Learners (Identification Test), and then categorized in one of five proficiency levels: Entering, Emerging, Transitioning, Expanding, and Commanding. Students without an Individualized Education Plan (IEP) are administered the Identification Test, and ELL status is determined based on the results of that assessment. For students who have IEPs, a Language Proficiency Team considers whether the student's disability is the determining factor in their communicative competence and recommends whether the Identification Test should be administered. Students who score below the Commanding proficiency level are eligible to receive ELL services.

SED assesses the English language proficiency of ELLs annually through the New York State English as a Second Language Achievement Test (Achievement Test). Once a student reaches the Commanding proficiency level or completes the alternate exit of ELL status by reaching the Expanding proficiency level and passing their SED English Language Arts test or Regents exam in the same year, they are no longer considered an ELL and are not eligible for ELL services but are entitled to Former ELL services for 2 additional years. (See the figure on page 10 for a detailed outline of the ELL program process.)

Students who are eligible for ELL services are placed in one of two programs: Bilingual Education (BE) or English as a New Language (ENL). School districts with an enrollment of 20 or more ELLs of the same grade level and with the same home language other than English are required to provide the students with a BE program, unless exempted. A BE program has three components: language arts instruction, including Home Language Arts (instruction in the student's home language) and English Language Arts; ENL; and bilingual content area instruction. BE programs include transitional BE programs and Dual Language programs. Transitional BE programs offer students of the same home language the opportunity to learn English while continuing to learn academic content in their home language, with the goal of phasing out instruction in the home language. Students in Dual Language programs

learn to speak, read, and write in two languages. Dual Language program enrollment is not limited to ELLs and includes students who speak English as their primary language. Part 154 allows SED to grant temporary exemptions from BE program requirements. Districts can obtain a Bilingual Education Program Waiver (waiver) if they can demonstrate that they don't have qualified staff, are actively trying to recruit qualified staff, and have an alternate plan for providing services to eligible students.

ENL programs, alternatively, typically serve students from many different home language backgrounds whose only common language is English and who cannot participate in a BE program. An ENL program has two components: content area instruction in English, including home language and additional supports, and English language development (i.e., Stand-alone and/or Integrated ENL). In a Stand-alone ENL class, students receive English language development instruction from a State-certified teacher of English for Speakers of Other Languages (ESOL) in order to acquire the English language needed for success in core content areas. In Integrated ENL classes, students receive core content area and English language development instruction, including the use of the home/primary language as support and appropriate ELL instructional supports to enrich comprehension. Integrated ENL classes are taught by a teacher dually certified in the content area and ENL or are co-taught by a certified content area teacher and a certified ENL teacher.

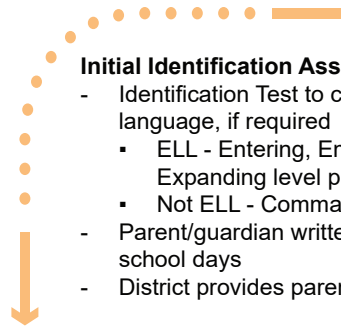
Part 154 mandates that school districts develop a Comprehensive ELL Education Plan (Comprehensive Plan) to meet the educational needs of ELLs. SED requires school districts to submit annual plan updates, which include assurances for accuracy and a description of any changes or additions from the previous update. Additionally, all school districts must report student data to SED annually via the Student Information Repository System (SIRS), which includes indicating whether students are ELL eligible, along with the services they received (e.g., ENL, BE program, ELL eligible but not in an ELL program). OBEWL monitors school districts' compliance with Part 154 through review of Comprehensive Plan updates and attestations, as well as periodic compliance reviews (e.g., Building Reviews) and investigations as needed. OBEWL may require school districts to develop corrective action plans (CAPs) to address statutory or regulatory violations that cannot be resolved through informal intervention.

ELL Screening, Identification, Placement, Review, and Exit Criteria



Screening:

- Questionnaire to all new students
- Individual interview if language other than English is spoken in the home



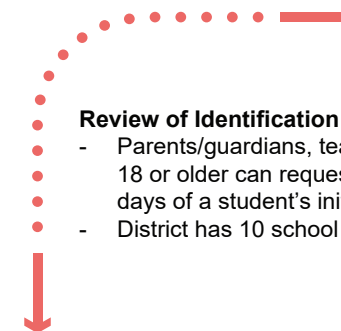
Initial Identification Assessment:

- Identification Test to confirm non-English home language, if required
 - ELL - Entering, Emerging, Transitioning, or Expanding level proficiency
 - Not ELL - Commanding level proficiency
- Parent/guardian written identification notice within 5 school days
- District provides parents/guardian orientation session



Placement:

- Parent/guardian placement notification within 10 school days of enrollment



Review of Identification Determination:

- Parents/guardians, teachers, or students age 18 or older can request a review within 45 days of a student's initial ELL designation
- District has 10 school days to initiate review



Exit Criteria:

- Grade K-12: Identification Test Commanding Level
- Grade 3-8: Identification Test Expanding Level + 3 or above on English Language Arts in same year
- Grade 9-12: Identification Test Expanding Level + 65 or above on English Regents Exam
- Exited ELL: Entitled to up to 2 years of Former ELL Services & Assessment Testing

Audit Findings and Recommendations

With the recent increase in the enrollment of speakers of languages other than English, and migrants increasingly relocating to communities outside of New York City, it is even more imperative that SED provide ongoing guidance, professional development, resources, and assistance to State school districts regarding the education of ELLs in order to enable them to comply with federal and State standards.

We found SED is not adequately overseeing whether school districts are providing required services to ELLs, with districts in some cases unable to meet BE program requirements due to a lack of certified teachers or certifying exams. Seven of the nine (78%) school districts we visited that required BE programs did not have a program or an exemption from BE requirements for all required languages and grade levels. These nine school districts enrolled 7,317 ELLs entitled to bilingual education; however, 5,632 (77%) students did not have programs available in their home languages and/or grade levels. Districts cited a lack of certified teachers in languages commonly spoken by ELLs as a contributing factor in not accommodating these students. For some languages that require a BE program, exams to qualify and certify teachers have yet to be created or translated. SED has recently revised some of its ELL teaching requirements to address these issues.

Furthermore, we were not always able to determine whether ELLs received required services, as supporting documentation maintained by the school districts was not always available. For example, many school districts were unable to provide student schedules, or student schedules they did provide did not support the required units of study. Moreover, we found SIRS data reported to SED by school districts was not accurate or reliable for oversight and planning purposes. Additionally, despite the existence of SED procedures, student information was not always shared between school districts when students transferred to ensure continuity of services.

During our audit scope, OBEWL did not conduct any Building Reviews designed to monitor compliance with Part 154 at individual schools. Building Reviews were suspended due to the COVID-19 pandemic and had not resumed as of the end of our audit in November 2023. As these reviews provide OBEWL with its main source of ELL program-related information that is not self-reported by districts, the reviews may offer vital insights into whether ELLs are receiving all required services.

Lack of BE Program Availability

We found that many districts either have not implemented or are still in the process of implementing required BE programs. Without these services, students may be less engaged in school and less likely to receive a high school diploma, putting them at higher risk of future employment and educational consequences.

Each year, school districts are required to estimate ELLs by school and grade as well as the number of ELLs who speak the same home language. This estimate must be based on the previous 3 years of enrollment data and be submitted to SED and made widely, publicly available. District administrators are meant to use this estimate to determine whether their district is required to offer BE programs.

Updates to BE program requirements coupled with an increasing ELL population have prompted a need for more BE programs in the State. Before Part 154 was revised in 2014, school districts were required to provide BE programs if 20 or more ELLs of the same grade level and home language were enrolled in the same building. This requirement now applies to any district with this enrollment, even when dispersed across multiple buildings.

BE Program Availability for Visited Schools

We judgmentally selected 20 of the 573 school districts with ELL enrollment during the 2021-22 school year based on geographic location and ELL population size and visited these districts to determine whether they were complying with Part 154 requirements. We also analyzed SIRS data from the 2021-22 school year to determine which school districts had 20 or more ELLs in the same grade level who also speak the same home language and identified 90 districts required to offer 110 BE programs in 13 different languages. We ensured that at least one of these districts from each RBERN region was represented in our sample. Districts that meet the threshold of 20 or more ELLs of the same grade level/home language are required to have BE classes in the applicable home languages. Nine of the judgmentally selected 20 districts in our sample met this criteria for one or more languages and, therefore, required BE programs (absent an exemption): Buffalo, Dunkirk, Geneva, Lindenhurst, Mineola, Sachem, Schenectady, Suffern, and Utica.

Overall, these nine school districts enrolled 7,317 ELLs entitled to bilingual education; however, 5,632 (77%) students did not have programs available in their home languages and/or grade levels.

Regarding BE offerings by district, we found:

- Two districts (22%) offered BE programs for all entitled students (Geneva, Mineola)
- Five districts (56%) had BE programs available, but not for all required languages and/or grade levels (Buffalo, Dunkirk, Lindenhurst, Suffern, Utica)
- Two districts (22%) did not have the required BE programs (Sachem, Schenectady)

While Geneva and Mineola provided full BE programs, only one of Geneva's 214 ELLs was coded in SIRS as participating in a BE program, and Mineola officials stated they had difficulty finding teachers with proper certifications.

Buffalo is required to offer BE programs for students who speak seven languages: Arabic, Bengali, Burmese, Karen, Somali, Spanish, and Swahili. In the 2021-22 school year, 4,640 of the 5,912 ELLs were entitled to a BE program. However, only 1,127 (24%) of these students had BE programs available in their home languages and/or grade levels. Buffalo only offers a Spanish language BE program to students in grades K–6. Although Buffalo is required to but does not offer full bilingual programs at its secondary schools, Spanish-speaking ELLs in grades 7 and 8 can receive Home Language Arts courses, and ELLs in grades 9–12 can receive some

bilingual classes at one of Buffalo’s high schools. Buffalo school district officials told us that bilingual support includes access to multilingual aides, assistants, and academic coaches.

Utica is required to offer BE programs in Arabic, Burmese, Karen, and Spanish. In the 2021-22 school year, Utica only offered a BE program to its Spanish-speaking students in kindergarten and first grade. Dunkirk only has a Spanish BE program for kindergarten, but should have a program for K–7 and 9–11. Lindenhurst only has a Spanish BE program for K–3 but should have a program for K–4, 6–9, and 11–12. Additionally, Suffern only has a Spanish BE program for kindergarten and grades 6 and 9, but should have a program for K–11.

Dunkirk, Lindenhurst, Suffern, and Utica all have plans to expand their Spanish BE programs. Furthermore, OBEWL and RBERN provided in-district technical assistance to support Utica’s BE program during our audit scope.

Schenectady has sought assistance from RBERN and OBEWL and is actively in the process of creating a BE program. RBERN provided Schenectady with monthly technical assistance and coaching sessions related to dual language exploration/implementation during the 2022-23 school year.

Sachem officials disagreed that they require a program; however, SIRS data, which documents actual needs, shows differently.

BE Program Availability Among Surveyed Schools

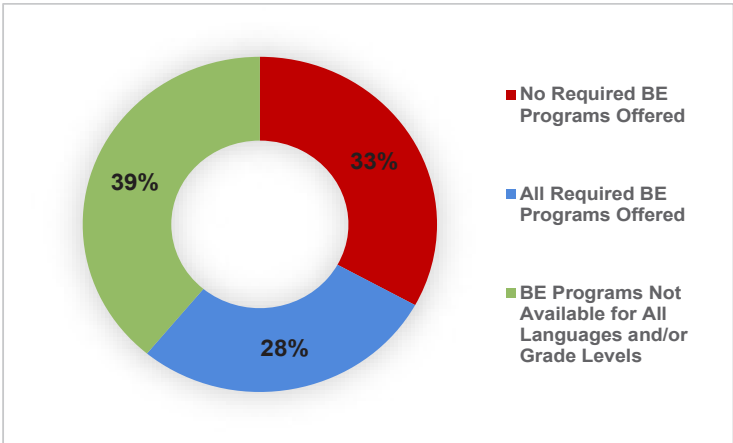
In May 2023, we surveyed 80 school districts we didn’t visit regarding their BE program availability and received responses from 61 districts. Overall, the 61 school districts that responded to our survey enrolled 45,277 ELLs entitled to bilingual education in 2021-22. However, according to SIRS data, 7,292 students (16%) did not have programs available in their home languages and/or grade levels.

Of the 61 districts, only 18 (30%) districts self-reported having BE programs available for all entitled students. Twenty-one (34%) reported not having any BE programs available, and 22 (36%) reported not having programs available for all required languages and grade levels.

While the SIRS data shows these 61 school districts should have BE programs, many school districts responded that bilingual programs aren’t applicable to them. As BE program requirements are based on estimates that school districts submit annually to SED, this may be true. However, although this data must be submitted to SED and made publicly available, SED was not able to provide it. Despite this requirement, SED officials told us the annual estimates are maintained at the district level and not sent to SED. Because SED did not maintain the annual estimates, we instead surveyed school districts based on actual enrollment numbers to determine whether a district was required to offer a BE program.

In total, 23 of the 70 (33%) school districts that we visited or that responded to our survey (nine visited and 61 survey responses) do not offer required BE programs at any grade level. Of the 47 that do (67%), many (27, or 39% of total) do not offer programs for all required languages and/or grade levels (see Figure 2). Eighteen (38%) did not offer them at the high school level.

Figure 2 – 70 School Districts Surveyed or Visited



According to officials at 10 districts, they were launching or would be expanding BE programs soon. Thirty-nine of the 70 school districts (56%) cited hiring qualified staff as a barrier to providing BE programs. Districts cited cost/lack of funding, scheduling, and physical space as additional impediments. We were unable to determine if the remaining 19 districts that did not respond to our survey offered BE programs as required.

Lack of Resources for Providing ELL Services

To teach ENL and BE classes, educators are required to hold professional certificates in ESOL and/or bilingual extensions—extensions of base teaching certificates, which authorize the holder not only to teach the subject they are already certified in (e.g., mathematics, geography) but to also instruct ELLs in BE programs. ESOL-certified teachers work with content area teachers to ensure instruction meets the needs of ELLs. A teacher who is dually certified in ESOL and a content area may teach Integrated ENL.

Unsupported Languages for BE Programs

We found a lack of qualified teachers with BE extensions in languages commonly spoken by ELLs, limiting access to BE instruction as required under Part 154 for some students.

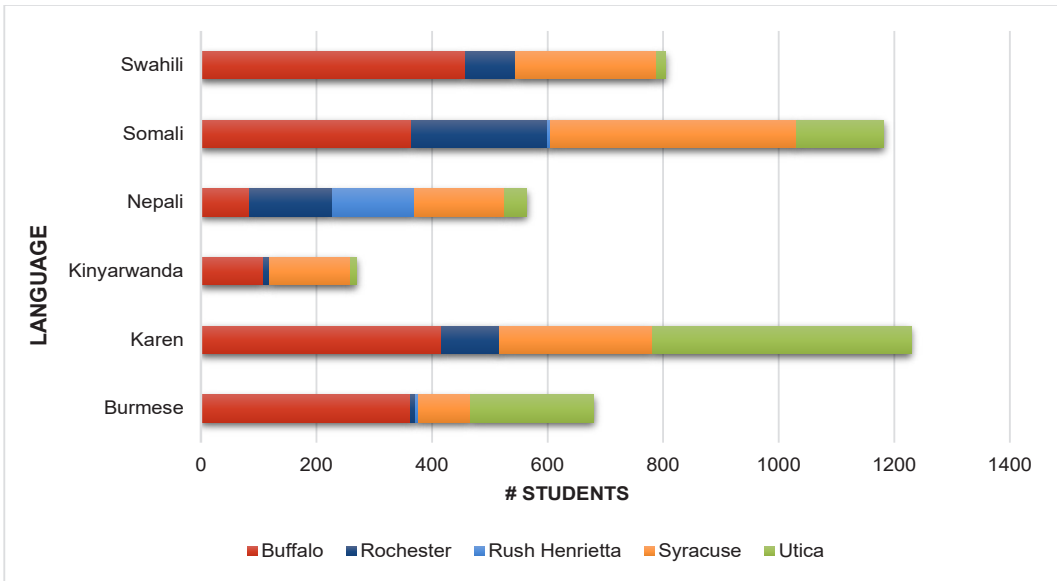
To become certified in BE, a teacher is required to complete a State-registered BE extension program, which involves learning how to teach ELLs using both the student’s native language and English and then demonstrating through a student teaching portion the ability to teach in a language other than English.

SED’s Office of Higher Education keeps a database with all approved teacher certification programs for a BE extension; however, it is difficult to see what gaps exist as the programs are not registered by language. Furthermore, through our own research, we were unable to find information on existing BE extension programs for certifications in specific languages, such as Arabic and Bengali. RBERN officials stated that programs for BE extensions in certain languages are not feasible at institutions of higher education because there is not enough demand.

Teachers must also pass a Bilingual Education Assessment (BEA) to become certified in BE, which first requires an existing valid base SED certification. The BEA is offered in the target language of the certification extension sought. However, BEAs are not specifically available in all languages, and OBEWL officials stated there are limited resources available to provide for more frequent exam development.

The New York State Teacher Certification Examinations (NYSTCE) website shows the BEA is available in 32 languages, and NYSTCE develops exams when five or more candidates request the BEA in a language in any given year. Notably, the BEA was not available in Burmese, Karen, Kinyarwanda, Nepali, Somali, and Swahili. Therefore, New York does not have any teachers certified to teach certain components (e.g., bilingual content area and K–6 Home Language Arts instruction) required for BE programs in these languages. According to the 2019–22 SIRS data, five school districts enrolled 20 or more ELLs of the same grade level speaking one of these languages: Buffalo, Rochester, Rush-Henrietta, Syracuse, and Utica. For the 2021-22 school year, 4,741 students at these districts spoke one of these six languages (see Figure 3).

Figure 3 – 2021-22 School Year Unsupported BE Students



During our audit, SED revised its BEA development plan to respond to district needs while balancing SED exam development resources, citing lack of resources to provide more frequent exam development as a key limitation. According to officials,

Of the 90 districts that responded to our survey, 76 stated that they currently have ELLs enrolled in their districts. Of the 76 school districts with ELLs:

- 22 (29%) reported employing ESOL-certified teachers at the district to provide services
- 33 (43%) reported using acceptable alternatives, including Boards of Cooperative Educational Services (BOCES) (31) and other school districts (two) to provide services with ESOL-certified teachers
- 21 (28%) of the remaining districts reported they are relying on teachers who are not certified

Many of the school districts stated they are not able to attract staff with the appropriate certifications. School districts that are unable to hire a qualified ENL teacher will often hire an itinerant teacher through BOCES. However, due to the teacher shortage and the demographics of rural New York State, BOCES aren't always able to meet the demand. One RBERN official told us their region's BOCES have a demand for 10 ENL teachers but can only hire one. They also recommend that districts find a similarly certified teacher to provide ENL services in the meantime.

In response to the lack of certified teachers, the Board of Regents approved an emergency action in September 2023 to amend the requirements for supplementary certifications for teachers and supplementary bilingual extensions. This change allows educators to obtain certificates and extensions more expeditiously to address the influx of new ELLs enrolling across the State.

Increasing the number of teachers certified in bilingual education in the State will ensure that a skilled workforce is available to provide bilingual education to ELLs and will help eliminate a significant barrier to compliance with bilingual education laws.

BE Program Waivers and Investigations

Part 154 allows for limited exemptions from BE program requirements. Districts may seek a waiver—a 1-year exemption from SED—from providing BE programs in languages that are the home language of less than 5% of the statewide ELL population. In New York State, this accounts for all languages other than Spanish and Chinese. To apply for a waiver, school districts must demonstrate that they don't have qualified staff, are actively trying to recruit qualified staff, and have an alternate plan for providing services to eligible students. Districts must re-apply annually for waivers, which are only allowed for 5 consecutive years.

We found school districts without required BE programs are not obtaining waivers. In the 2021-22 school year, OBEWL records showed only two districts obtained a total of three waivers: Rochester and Rush-Henrietta. Based on SIRS data, seven additional districts were eligible for a waiver but did not have either a BE program or a waiver (see following table).

Districts Requiring Waivers for 2021-22 School Year

School District	Home Language Without BE Program (Excluding Spanish and Chinese)	Exemption
Albany	Arabic	No
Buffalo	Arabic	No
	Bengali	No
	Burmese	No
	Karen	No
	Somali	No
	Swahili	No
East Ramapo	Haitian Creole	No
Harrison	Japanese	No
Rochester	Arabic	Yes
	Somali	Yes
Rush-Henrietta	Nepali	Yes
Syracuse*	Arabic	No
	Karen	No
	Kinyarwanda	No
	Somali	No
	Swahili	No
Utica	Arabic	No
	Burmese	No
	Karen	No
Yonkers	Arabic	No

* Syracuse granted waivers for the 2020-21 school year for Arabic, Karen, Somali, and Swahili programs.

According to its Enforcement Protocol, OBEWL conducts investigations regarding enforcement of ELL education under Part 154. OBEWL investigations can be triggered by a public complaint or report or initiated at OBEWL’s discretion based on information received through other avenues (e.g., another SED office or through review of data). OBEWL works with districts to correct violations either via technical assistance and monitoring, or through a 3-year CAP.

We found OBEWL did not hold districts accountable for failing to obtain a waiver. We reviewed CAPs for three districts that did not offer BE programs to all entitled ELLs and found that OBEWL cited only one district for failing to offer and provide bilingual education. The other two districts’ CAPs addressed different issues. By not enforcing the requirement for districts to apply for the waiver, SED is allowing school districts to avoid justifying the need for the waiver, such as demonstrating efforts to recruit qualified teachers and planning for providing alternate home language supports. As these justifications provide assurance that districts are making efforts to serve ELL students as required, OBEWL should be holding districts accountable for providing them.

Missing and Incomplete Documentation

Inconsistent Identification Documentation Collection and Retention

Based on our review of district records, we determined that incomplete files and missing documentation limited SED's ability to ensure that ELL students are receiving the services they require in accordance with Part 154.

Each school district is required to assess student eligibility for language support services, including the administration of the questionnaire and individual interviews with students. If these tools indicate that a language other than English is spoken at home, the district must administer an Identification Test. School districts must also ensure that all identified ELLs have been appropriately placed in a program within 10 days of a student's initial enrollment or re-entry into a district.

Each school district is required to maintain records of notices that indicate program selection signed by the ELL's parents/guardians. Districts are also required to retain documents related to the initial identification and any subsequent review process, including questionnaires, Identification Test results, and parent/guardian notifications, as part of the student's cumulative record (for 6 years after graduation) and to support the ELL's initial proficiency level and the timely provision of necessary services.

To determine whether school districts maintained identification and placement documents, we reviewed cumulative files for 855 students for a questionnaire, Identification Test, and parent/guardian notifications: three records per student, totaling 2,565 individual documents. School districts were unable to provide 683 of the 2,565 documents (27%), and at least one document was missing from 448 of the 855 (52%) of the students' cumulative files. Three school districts were missing at least one document for every student in our sample. Cumulative files for 42 students (5%) were missing all three types of documents. Specifically:

- 329 of 855 student files (38%) did not contain parent/guardian notifications
- 261 student files (31%) did not contain an Identification Test
- 93 student files (11%) did not include a questionnaire

We found that the districts we visited had different methods of retaining ELL student information. For example, one district told us SED advised them to retain only the most recent parent notification, while another district told us it submitted notifications to parents/guardians electronically and did not retain copies in the students' cumulative files. The lack of SED oversight has allowed school districts to adopt their own methods of retaining information important for monitoring whether ELLs are receiving adequate services in a timely manner. Absent proper documentation, OBEWL can't be assured that ELLs are receiving required services and obtaining the education to which they are entitled.

Insufficient Documentation of Required Services

Identification Tests are administered to new students, and ELLs take Achievement Tests annually to assess proficiency levels. Each proficiency and grade level requires different units of study (defined as 180 minutes per week) and each program determines different teacher qualification requirements.

We reviewed student records, including student schedules, for each of the 1,743 service years for our sample of 749 students to determine if ELL students received required services. We found school districts could not provide sufficient documentation to support that 287 students (38%) received all ENL services for 507 of the service years (29%); therefore, we could not determine if all students received required services.

Specifically, we found:

- No documentary evidence of services for 194 service years (11%) for 132 students (18%).
- Insufficient documentation for 200 service years (11%) for 99 students (13%). There was documentation to support that students were assigned ENL teachers during a school year; however, we were unable to verify when the ENL instruction occurred and the number of units of study provided.
- Inadequate services for 113 service years (6%) for 92 students (12%). Students did not receive all the services or units of study required at their proficiency level.

We observed multiple issues contributing to the lack of documentation: student schedules did not always denote which courses were ENL courses; school districts did not always have documentation to support ENL teachers who pushed-in to the classroom or pulled students out for services; and ENL teachers generally keep their own schedules and the school district did not retain copies.

School districts also often cited scheduling issues as reasons ELL students were not receiving all required services. For example, a student may receive four 40-minute periods of instruction totaling 160 minutes instead of the required 180 minutes per week.

In addition to the ENL requirements, students in a BE program also require a Home Language Arts class and one or two bilingual content area subjects (e.g., math, science, or history classes in their home language). For the 59 students in a BE program in our sample of 749 students, 40 (68%) were missing a component of their required BE program for 1 or more service years. Our review of schedules found that the students did not appear to be enrolled in a Home Language Arts class or a bilingual content area subject.

Inadequate documentation and documentation that points to insufficient services leaves SED less able to determine whether school districts are providing all services to ELLs in accordance with Part 154, potentially leaving some students without access to instruction at the same academic level as all other children.

Gaps in Program Monitoring

Building Reviews

SED's Office of Accountability conducts coordinated monitoring reviews designed to assess districts' adherence to programmatic and fiscal requirements related to ESSA-funded programs. Each year, SED uses a risk matrix to select a sample of school districts for monitoring reviews. OBEWL staff participate in the reviews by monitoring for compliance and providing technical assistance related to Title III. OBEWL also reviews data from the districts selected for coordinated monitoring and identifies districts to receive Part 154 Building Level Program Reviews (Building Reviews). Building Reviews—OBEWL's main mechanism for monitoring compliance with Part 154 that doesn't rely on self-reported information, such as Comprehensive Plans—are conducted separately from, but at the same time as, the coordinated monitoring reviews. Districts receive formal reports of any findings resulting from these reviews. SED officials told us they select approximately six districts (1% of the 573 public school districts enrolling ELLs outside of NYC each year) for Building Reviews based on factors such as the amount of time since the program's last review.

We found OBEWL didn't conduct any Building Reviews during our audit period. Although OBEWL conducted some coordinated monitoring reviews virtually from the beginning of the COVID-19 pandemic until late in the 2022-23 school year, OBEWL officials said they could not adapt Building Reviews to virtual monitoring, citing the importance of observing classrooms and other aspects of the districts in person. Although coordinated monitoring shifted back to in-person visits by the end of the 2022-23 school year, OBEWL officials stated SED did not allot for the additional time needed to resume Building Reviews. They intend to return to conducting Building Reviews and providing formal reports to document findings; however, none were conducted during our audit.

The lack of Building Reviews lessens OBEWL's ability to determine school district compliance with Part 154 requirements in a way that is not dependent on district self-reporting.

Inaccurate and Inconsistent SIRS Data

SIRS provides a single source of standardized individual student records for analysis at the local, regional, and State levels. School districts with ELL enrollment must annually report to SED via SIRS. RBERNs and OBEWL use SIRS data to plan for resources and professional development and as a tool to determine where to conduct compliance reviews. However, we found school districts are not always submitting accurate or consistent data.

For example, the questionnaire is one of the first documents a student's family receives when registering at a school district, and it must be administered by qualified personnel (such as a bilingual or ESOL teacher) to parents or guardians to

ensure accuracy. However, we found the home language data was either inaccurate or not useful in 7,148 of the 110,622 ELL student files (6%) in SIRS. We identified the following languages listed in SIRS:

- 5,479 – English
- 1,301 – Other language
- 217 – Miscellaneous
- 88 – No language listed
- 55 – Multiple
- 8 – Undetermined

English was listed as the second most common home language after Spanish for ELLs in SIRS. School administrators and RBERN officials told us it is common for parents to enter English as their child’s home language, either by mistake or due to stigmas associated with ELL programs. RBERN officials stated they encourage districts to revisit questionnaires with parents during the 10-day identification period to verify information and make potential corrections; however, the data shows that many of these errors remain unremedied. Thirty-nine of our sample of 855 students had English as their home language in SIRS. We reviewed 31 of these 39 students’ questionnaires (eight were not present in the students’ cumulative files) and found that five had home languages listed that were not English. Reporting English or a non-specific “other” language as a home language for ELLs does not provide SED with information useful for resource planning or compliance reviews and affects the accuracy of language counts used to determine whether a BE program is required.

SIRS data is also not reliable for determining whether ELLs are receiving appropriate services. School districts enter the program (e.g., ENL, Transitional BE program, Dual Language) and services received (e.g., Full, Partial, None) for each student. However, we found that the information in SIRS did not always match the results of our on-site reviews. We compared SIRS data with our review of 1,026 of the 1,743 service years for 502 of the 749 students in our sample that had sufficient documentation. We found the data disagreed with our review for 302 of 1,026 service years (29%). For 185 of 502 students (37%), their service levels were overstated for 1 or more years in SIRS. Additionally, we identified seven students listed in multiple programs and six students with incorrectly reported programs. For example, one student was listed as being enrolled in a Transitional BE program in SIRS, but we found they were in an ENL program.

Students can only be enrolled in one program at a time. However, many students were reported in SIRS as receiving services in two or three programs, including 657 identified as both ELL eligible but not in an ELL program and as participating in another program, making it difficult to effectively monitor whether ELLs are receiving adequate services. While different programs can be offered at different points throughout the year with appropriate entry and exit dates, ELLs should not be reported as ELL eligible and in multiple programs.

According to OBEWL officials, there are mechanisms that verify the format and completeness of the data at local, regional, and State levels, as well as data reasonableness reports available to districts to check the accuracy and logical connection of different data elements. However, the responsibility for ensuring data accuracy rests mainly with the school districts. All data submitted to SIRS is required to be certified by school districts to ensure accuracy. However, SED officials stated the lack of resources in school districts—especially the lack of dedicated district data coordinators—results in inaccurate data or outdated information. Overall, OBEWL officials said this is a known issue, but lack of resources prevents them from addressing it fully.

Inaccurate SIRS data affects OBEWL’s ability to effectively monitor school districts’ compliance with Part 154 requirements and deprives OBEWL of meaningful information to guide decisions that could improve student performance and professional development and provide needed resources.

Transfer Student Information-Sharing Challenges

We found that districts did not always promptly share, or appropriately document and retain, information regarding transfer students. Delayed or missing information regarding ELL transfer students inhibits continuity of services for students adjusting to a new school environment.

The Identification Test is administered within 2 weeks of a student’s initial enrollment in a State school and is required to be maintained in a student’s cumulative record for 6 years after graduation. According to SED guidelines, if a student transfers from one State district to another, the test is not re-administered and the student is placed based on the most recent test score documented in the student’s records. If the transferring student has no records, according to SED’s website, they are treated as a new entrant and the entire identification process must be re-administered. School districts do not have direct access to these assessments.

SED noted that ELL students are often transient and frequently move (within the country as well as the State) because of family and economic circumstances. In our sample of 749 students, 67 (9%) had transferred out of the district prior to our review. We found documents such as Identification Tests were not always forwarded when ELLs transferred to a new school district. One district specifically cited that schools face difficulty getting information from prior districts, especially these tests. Other school district officials told us students’ prior school districts can take months to respond, which can impede class scheduling.

We also found some districts do not retain student cumulative files and schedules when a student transfers out of their district. For example, administrators at one district did not have any records for 10 students we originally selected for our sample. They told us the students had transferred from the district and they had forwarded the cumulative files to the new district upon transfer but did not retain documentation related to the students. Another school district we visited used a student information system that did not retain schedules after a student transferred.

Therefore, we were unable to verify whether those students in our sample had received ENL services from qualified instructors.

For ELLs who relocate, sharing information between school districts is important to ensure continuity of services. Key instructional information should be available early to provide the best instructional plan for these students.

In response to our findings, SED Office of Information and Reporting Services officials told us the lack of State investment in the student data systems has resulted in aged infrastructure and no system capacity to track student movement. Sharing information across school districts is challenging for multiple reasons, including that parents may not reveal where students are moving, no dedicated staff to follow ELL students for their transition, and lack of resources to build system capacity for information sharing.

Furthermore, SED officials told us that, due to its personal nature, student-level data can be accessed only by authorized personnel. When students move from one district to another, there is a prescribed procedure for dis/re-enrolling. In addition, SED provides guidance to districts on how to request Identification Test and Achievement Test scores if they are not provided by the previous district. However, our observations suggest this procedure is either unknown or not followed by districts. When student information isn't effectively shared, school districts can't work together to provide more cohesive services for ELLs.

Recommendations

1. Enhance monitoring activities and guidance to ensure school districts:
 - Comply with Part 154.
 - Provide required services.
 - Retain necessary documentation.
2. Continue to work with the Board of Regents to increase the number of certified instructors.
3. Reinforce waiver requirements for schools not offering BE programs for all applicable home languages and grade levels.
4. Work with school districts to help them to obtain and retain required documentation regarding ELL identification and provision of services.
5. Resume Building Reviews at school districts in order to monitor compliance with Part 154 in a way that doesn't rely on self-reported information.
6. Work with school districts to improve the reliability of program and participation data.
7. Provide guidance to school districts to enable efficient sharing of information.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine whether SED is adequately overseeing whether school districts are providing services to ELLs as required. The audit covered the period from July 2019 through November 2023.

To accomplish our objective and assess related internal controls, we reviewed relevant laws and regulations related to ELLs, including Part 154; interviewed agency and school district officials; reviewed policies and procedures; and analyzed SIRS data. For a sample of school districts, we interviewed school administrators, observed BE and ENL classes, and reviewed Comprehensive Plan updates and professional development plans.

We used a non-statistical sampling approach to provide conclusions on our audit objective and to test internal controls and compliance. We selected judgmental and random samples. However, because we used a non-statistical sampling approach for our tests, we cannot project the results to the respective populations, even for the random samples. Our samples, which are discussed in detail in the body of our report, include:

- A judgmental sample of 20 of 573 school districts with ELL enrollment (excluding NYC and charter schools), based on geographic location and ELL population size, to visit to test for compliance with Part 154, including BE program availability.
- A random sample of 855 of 15,897 ELLs, based on ELL population at each of the 20 school districts, to test for compliance with Part 154, including identification documentation. Of the 855 ELL sample, we limited our review of required services and qualified instruction to 749 ELLs, as we reviewed more identification documentation during our first three site visits. Sample sizes also varied slightly due to some ELLs completing the identification process but exiting the district prior to receiving services.

We obtained data from SIRS and determined the information lacked sufficient reliability, as it was inaccurate and we could not test completeness. However, as there was no alternative source of information available to us, we used the SIRS data when selecting sample items to review. Our findings related to SIRS were based on our audit work and on other records, not on the SIRS data obtained.

As part of our audit procedures, we used GIS software for geographic analysis. As part of the geographic analysis, we developed external interactive maps to improve understanding of our report. Portions of the visualizations and maps contain intellectual property of ESRI and its licensors and are used under license. Copyright © 1987–2020 ESRI and its licensors. All rights reserved. Colors were selected from <https://colorbrewer2.org/> by Cynthia A. Brewer, Geography, Pennsylvania State University. Please note: geographic data was not available for all school districts, as noted on the interactive map content.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. These duties could be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of SED's oversight of whether school districts are providing services to ELLs.

Reporting Requirements

We provided a draft copy of this report to SED officials for their review and formal written comments. We considered their response in preparing this final report and have included it in its entirety at the end of the report. SED officials generally agreed with the recommendations and have indicated actions they will take to address them.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the State Education Department shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Agency Comments



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

Sharon Cates-Williams
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August 12, 2024

Ms. Nadine Morrell
Audit Director
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236-0001

RE: Draft Audit Report 2022-S-30, Issued July 3, 2024

Dear Ms. Morrell:

The New York State Education Department (NYSED) appreciates the opportunity to respond to the Office of the State Comptroller (OSC) regarding their audit of the *New York State Education Department's English Language Learner Programs (2022-S-30)*.

Background

The stated objective of the audit was "to determine whether the State Education Department is adequately overseeing whether school districts are providing services to English Language Learners (ELLs) as required."

While this is a comprehensive audit, it is important for us to clarify specific inaccuracies within the audit: specifically, the audit's description of the ELL Screening, Identification, and Placement (ELL ID process).

On page 8, OSC states, "To identify students eligible for ELL services, school districts administer a Home Language Questionnaire (questionnaire) to all new students. Where these assessments indicate a student's home or primary language is other than English, students are interviewed individually and given the New York State Identification Test for English Language Learners (Identification Test)." The specific misstatements within this description are addressed below.

There are four steps in the ELL ID process: the Home Language Questionnaire, the individual interview, the Language Proficiency Team, and the New York State Identification Test for English Language Learners (NYSITELL). The results of the Home Language Questionnaire are not sufficient to "indicate a student's home or primary language is other than English" as stated in the report. Rather, the purpose of the questionnaire is to identify all languages that are spoken in a student's home. Only students whose Home Language Questionnaire indicates that a language other than English is spoken in the home then continue through the ELL ID process.

Following this determination, a qualified professional administers the individual interview to determine whether a student displays grade-level appropriate communicative competence in English. Not all students who participate in the interview are "given the New York State Identification Test for English Language Learners" as stated in the report. Students who do not display this level of communicative competence continue through the ELL ID process in one of two paths. Students who have been assigned an Individualized Education Program (IEP) are referred to

the Language Proficiency Team (LPT), which is described below. Students without an IEP are administered the NYSITELL, and ELL status is determined based on the results of that assessment. For students who have IEPs, the LPT considers whether the student's disability is the determining factor in their communicative competence and recommends whether the NYSITELL should be administered. The school principal reviews the LPT recommendation and then determines whether the student should continue through the ELL ID process. Students who do continue through the ELL ID process are administered the NYSITELL, and ELL status is determined based on the results of that assessment.

Audit Findings and Recommendations
Lack of Bilingual Education (BE) Program Availability

OSC Recommendation #1

Enhance monitoring activities and guidance to ensure school districts:

- *Comply with Commissioner's Regulations (C.R.) Part 154.*
- *Provide required services.*
- *Retain necessary documentation.*

NYSED Response

The Office of Bilingual Education and World Languages (OBEWL) agrees with this recommendation. Currently, OBEWL requires every district superintendent to complete the Comprehensive ELL Education Program (CEEP) document in which they are required to attest that they meet all requirements of Commissioner's Regulation Part 154. We actively monitor districts that are under Corrective Action Plans (CAP); engage in coordinated Title III monitoring of between 5-10 districts annually, as identified with the Office of ESSA-Funded Programs; and monitor districts when needed in response to complaints and inquiries from the field.

Due to changes in monitoring systems and protocols, OBEWL has not been able to visit as many districts in person as it did before the pandemic. These changes include an increase in the number of CAP related visits due to districts' inability to make progress towards CAP goals during COVID-19 related school closures and changes to the coordinated monitoring schedules.

OBEWL is taking multiple actions to improve monitoring activities. These actions include updating the CEEP to require additional communication and evidence from districts, reducing the number of CAP visits to increase staff availability, assigning new and additional staff to engage in school monitoring visits, and coordinating with other NYSED offices to include review of ELL related documentation in their monitoring visits.

OSC Recommendation #2

Continue to work with the Board of Regents to increase the number of certified instructors.

NYSED Response

NYSED has taken the following actions to increase the number of instructors holding certification in English to Speakers of Other Languages (ESOL) or a Bilingual Extension to content area certification.

In September 2023, OBEWL partnered with the NYSED Office of Teacher and Leader Development (OTLD) to recommend a regulatory change to address the shortage of ESOL and BE teachers, which was being exacerbated by the influx of newly arrived immigrant students throughout New York State. The purpose of this change was to facilitate the ability of currently certified NYS teachers to earn a Supplementary Certificate in ESOL or a Supplementary Bilingual Extension. Additionally, it expedites the ability for NYS teachers who currently hold ESOL certification to earn a

Supplementary Certificate in a content area, which allows them to teach both that subject and English as a New Language in an integrated format. The Board of Regents approved this regulatory change for one year in September 2023. Based on the positive response from the public, OBEWL and OTLD recommended an additional year extension of this flexibility, which the Board of Regents approved in July 2024.

In 2023-2024, OBEWL sponsored 16 Clinically Rich-Intensive Teacher Institutes. These programs supplement tuition for currently certified NYS teachers to seek credits for additional certification in ESOL or a Bilingual Extension to their current certification. Each program enrolls 20 students per year. OBEWL meets regularly with each program to ensure that they are operating as intended, including recruitment of full cohorts of students each year, to increase the number of qualified instructors teaching ELLs in NYS schools.

The report notes on page 2 that “School districts lack certified BE teachers for languages commonly spoken by ELLs, and certification exams are not specifically available in all languages.” NYSED has a multi-year schedule for the development and update of teacher certification exams. This includes Bilingual Education Assessment (BEA) tests in previously unoffered languages. These new BEA tests are added to the test development schedule when the department receives requests from five different teachers for the same language. OBEWL works regularly with the OTLD and the Office of Teaching Initiatives to track the progress of BEA development and to communicate teacher requests for new exams.

OSC Recommendation #3

Reinforce waiver requirements for schools not offering BE programs for all applicable home languages and grade levels.

NYSED Response

OBEWL is working with the NYSED Office of Counsel to recommend changes to Commissioner’s Regulations (C.R.) Part 154’s BE waiver requirements. These updates will help the Department address schools’ ability to hire bilingual teachers in all required languages, while emphasizing Bilingual Education as the most successful method for ELLs to gain content knowledge as they develop their English language proficiency. In addition, OBEWL is updating its process for collecting waivers to better communicate the need for all districts to submit a BE waiver annually and an expedited process for the review and approval (or denial) of waivers.

As stated above, OBEWL continues to work closely with other NYSED offices to identify languages that require new BEA’s. Development of these exams will enable teachers to earn Bilingual Extensions and will enable schools to create new BE programs in those languages, eliminating the need for waivers.

OBEWL has convened the Bilingual Education Advisory Workgroup to create new resources that support BE programs within the state. These resources include guidance for school leaders on the creation and management of BE programs and guidance for teachers on best practices within the BE classroom.

OSC Recommendation #4

Work with school districts to help them to obtain and retain required documentation regarding ELL identification and provision of services.

NYSED Response

OBEWL supports eight Regional Bilingual Education Resource Networks (RBERN) which provide professional development and technical assistance to schools and districts throughout New York

State. Topics that are regularly addressed by RBERN training throughout the year include C.R. Part 154 Planning, ELL Identification, Instruction and Assessment Strategies, Newcomer Programming, Understanding the Needs of ELLs, and NYS Testing (including NYSITELL, the New York State English as a Second Language Achievement Test (NYSESLAT), and accommodations for other state tests). Topics that are regularly addressed by OBEWL and RBERN technical assistance include scheduling ENL and BE classes to ensure that students are provided the required units of study in ELL supports as determined by their English language proficiency levels.

OBEWL will direct the RBERNs to deliver specific professional development for school and district administrators focused on this documentation. Topics will include the documents that must be maintained, communication with parents, and sharing documents with new districts and schools upon student transfer. OBEWL has been working with the RBERNs to expand their reach by partnering with the other networks on delivering more virtual state-wide learning opportunities, sharing asynchronous video versions of trainings, and increasing the number of districts that receive support within each RBERN region. OBEWL provides a monthly professional development session, delivered by RBERN staff, to the ELL Leadership Council, which is comprised of ELL administrators from 55 school districts. OBEWL will also work with other NYSED offices to identify additional regional partners (e.g., individual BOCES, the NYS Staff/Curriculum Development Network (S/CDN)) who can provide support in sharing this information with school districts.

OSC Recommendation #5

Resume Building Reviews at school districts in order to monitor compliance with Part 154 that doesn't rely on self-reported information.

NYSED Response

As discussed above, OBEWL is taking multiple actions to increase the number of school monitoring activities. This includes updating the CEEP to require additional communication and evidence from districts; reducing the number of CAP visits to increase staff availability; and coordinating with other NYSED offices to include review of ELL related documentation in their monitoring visits. OBEWL has recently hired new associate level staff members, which will increase the office's ability to conduct building reviews. Additionally, OBEWL will direct the eight Regional Bilingual Education Resource Networks (RBERNs), which are described above, to assign staff to conduct and support these visits in coordination with our office.

OSC Recommendation #6

Work with school districts to improve the reliability of program and participation data.

NYSED Response

As described above, OBEWL will direct the RBERNs to deliver specific professional development for school and district administrators focused on documentation. All RBERN and OBEWL staff are prepared to provide technical assistance to schools that need guidance on documentation. OBEWL provides information on items that must be maintained in a student's cumulative record within its [Home Language Questionnaire \(HLQ\)](#) and [Individual Interview Guidance](#) and will develop a new document specific to record keeping, data reporting, and timely document sharing for student transfers to ensure that this information is readily available to the appropriate staff within schools and districts.

OSC Recommendation # 7

Provide guidance to school districts to enable efficient sharing of information.

NYSED Response

As described above, OBEWL will direct RBERNs to deliver specific professional development for school and district administrators focused on documentation, which will include information on sharing documents with new districts and schools upon student transfer. Additionally, OBEWL will partner with NYSED Information Reporting Services and other relevant offices to develop a new document specific to record keeping, data reporting, and timely document sharing for student transfers.

OBEWL communicates regularly with districts through the ELL Leadership Council, which is comprised of ELL administrators from 55 school districts and meets twice monthly to receive updates on NYSED policies and resources. Additionally, the office publishes a monthly newsletter sent widely to teachers and administrators which features information on all OBEWL resources. Also, OBEWL announces new publications and policy shifts in the P20 Weekly email that is distributed to all district superintendents statewide.

Sincerely,



Sharon Cates-Williams

cc: Angelique Johnson-Dingle
Jason Harmon
Elisa Alvarez
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State Comptroller's Comment

1. We revised our report to clarify the ELL ID process.

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