

**AN ANALYSIS OF THE CHANGES TO NEW YORK STATE COMMISSIONER'S
REGULATIONS PART 154 AND THE IMPACT ON THE LANDSCAPE OF ENGLISH
LANGUAGE EDUCATION**

By

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CERTIFICATION OF THESIS/PROJECT CAPSTONE WORK

We, the undersigned, certify that this project entitled AN ANALYSIS OF THE CHANGES TO NEW YORK STATE COMMISSIONER'S REGULATIONS PART 154 AND THE IMPACT ON THE LANDSCAPE OF ENGLISH LANGUAGE EDUCATION by CAROLINE MARKS, Candidate for the Degree of Master of Science in Education, Teaching English to Speakers of Other Languages, is acceptable in form and content and demonstrates a satisfactory knowledge of the field covered by this project.



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Abstract

The purpose of this study was to identify the changes between the two most recent iterations of New York State's Commissioner's Regulations (CR) Part 154, a policy document detailing the requirements for services provided to English language learners in the state. The researcher performed a content analysis of two versions of the same policy to identify specific changes in text and additions to the policy. Readings of outside sources in print media and press releases from educational organizations were performed to assist in interpretation of the contextual features of the policy and structural influences on policymakers in order to develop an understanding of the policy and a sense of the direction in which ELL education and services may be heading in the future. Findings from the document analysis indicated five major changes and additions between the two versions of CR Part 154 as well as minor alterations that may have an effect on stakeholders in ELL education. An investigation of educational issues in the media and press releases support findings that some aspects of the Part have been given priority in educational decisions. It is suggested that future research utilize interviews and observations of all those involved in the education of ELLs in order to develop a clear picture of the implications of the expanded policy on achievement, language development, and teachers' work experiences.

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Chapter 1: Introduction

Problem

Educational policy related to English language learners (ELLs) may initially seem to be a peripheral issue to many teachers immersed in the daily duties of lesson planning, assessments, and teaching practice. However, an expanding body of literature is pointing to the ways in which policy is infused into the curricular decisions of principals and school districts as well as the educational mandates passed down by state and federal governments. As student populations in the United States grow more multilingual and services for English language learners are altered, added, and restructured, teachers in both English as a New Language (ENL) and general content-related streams are likely to be impacted by ELL policies in ways they may not have expected or planned for in their entry into teaching.

Researchers point out that political mandates affecting language and education are often affected by the sociopolitical climate and events of the times in which they are enacted (see eg., Ovando, 2003; Lee & Hawkins, 2015). Ovando (2003) posits that people may be most successful in advocating for equitable language programs for ELLs if they come to the debate with knowledge of the historical context surrounding to policy decisions and reasons behind society's shifting perspectives on language and immigrant rights. Wenbin (2012) argues that policies must consider individuals and educational rights to endure and effect substantial changes. These points indicate that effective and equitable policy implementation requires knowledge, which can lead to action, on the part of policy actors at all levels; this is not limited to legislators but includes educators, administrators, voters, and anyone with a stake in the education system.

Significance

Policies may be restrictive, limiting the resources available to ELLs and their educators or mandating an English-only rule for language of instruction, or they may be non-restrictive and additive, making moves that may include supporting bilingual education and working with families to ensure connections between ELLs' home and school lives. Despite influence from federal legislation, notably during the years of No Child Left Behind (NCLB) and its emphasis on assessment, the orientation of policies often varies by state. Johnson and Johnson (2015) note that federal policy is filtered through state policy on its way to districts and schools. This is clear from the variations between states in interpretation and implementation of required assessments, distributions of materials and funds, and decisions regarding language of instruction. The latter has received a significant amount of press in recent decades and is a focal point for important changes in policies. As restrictive states analyze 15 or more years of English-only policies, many are finding the goals of higher achievement and English acquisition have not been realized through their current means. California and Massachusetts officials, two English-only states on the verge of implementing new programming policies, may find themselves looking to past practices and current research to ensure equitable and effective services.

In 2014, New York State enacted a revision to its primary legislation for the education and services provided to ELLs, Commissioner's Regulation (CR) Part 154. This was the first revision to the law since the version of CR Part 154 that took effect in 2007, and many changes and additions can be found between the two incarnations. One significant aspect of CR Part 154 impacting local Western New York school districts is the requirement that in districts with 20 or more ELLs who speak the same home language, some form of bilingual education must be

offered. To remain compliant, school districts are tasked with hiring bilingual teachers, updating curricula, and making alterations to programs and physical locations. Knowing the exact changes in the regulations and the context within which they were made may help district officials and educators understand the changes in their own district and the ways in which their roles as education providers may change.

Purpose

Research into the shifting and sometimes contradictory nature of policies over time seems to support the notion that one must learn from the past to avoid mistakes and continue toward a bright future. New York State, with a high level of support for bilingual education, appears to be striving for equitable and successful education of ELLs. Knowing where we have come from, however, is an important aspect of creating such an education. New York's CR Part 154 is of interest not only because it has significant implications for the education of ELLs and teachers' practices, but also, in terms of the document itself, because each draft is a revised version of the draft that came before. While some states are making legislative changes to education regulations that require overhauls of previous policies, New York's ELL policy has existed in its form as Part 154 for decades, with updates and amendments, both major and minor, to the original text. As such, analysis of the changes to Part 154 in addition to investigation of other publicly available documents may highlight how policy decisions connect to sociopolitical context and may reveal how that context has influenced policy decisions historically and can be leveraged to influence policy currently. Thus, it is the purpose of this research to identify the direction in which ELL policy in New York has gone since the 2007 version of Part 154 was passed and, based on patterns in text and context, interpret where ELL policy may be heading in the future.

Chapter 2: Literature Review

Orientations toward Language

Many of the ideologies and motivations behind language policy in action can be understood through Ruiz's (1984) proposed three language orientations, language-as-problem, language-as-right, and language-as-resource. While not all-encompassing, these orientations provide a basic framework for interpreting legislative decisions regarding language-of-instruction and school language programs as well as the ideologies and beliefs that drive educational practices. According to Ruiz, "Orientations are related to language attitudes in that they constitute the framework in which attitudes are formed: they help to delimit the range of attitudes toward language, and to make certain attitudes legitimate" (p. 4).

Language-as-right. The language-as-right orientation, which posits that people have a civil right to freely use and access their home language, is most closely connected to the court cases and legislation which have had historical impacts on the availability of services for English language learners, including the Bilingual Education Act of 1968 and 1974's *Lau v. Nichols* ruling, both of which established a position that English Language Learners are entitled to equal access to education through language services.

The orientations of language as a resource or a problem, meanwhile, manifest themselves in the language ideologies both stated explicitly and held implicitly by legislators, administrators, and educators. Language, and particularly bilingualism, is often explicitly cited as a resource in bilingual education programs, particularly those which are categorized as dual language (DL) immersion programs, in which students are taught in English and a target language, often with

the stated goal of bilingualism and biliteracy (Johnson, 2009; Johnson & Johnson, 2013; Cervantes-Soon, 2014).

The view of language as a problem may take the form of deficit notions of ELL students expressed by teachers, peers, or the larger community. In educational services and programs this orientation is most obvious in the English-only policies present in the first part of the 21st century in several districts and states, notably Arizona, Massachusetts, and California. Literature analyzing Arizona's anti-bilingual legislation has identified the regulations' impact on student achievement, language practices, and the attitudes of students and teachers toward English and other languages, particularly Spanish. In a qualitative study performed in one Arizona school district, Johnson and Johnson (2013) find indications that state and district stances on language-of-instruction and bilingual education may have a detrimental effect on students' views of their home language and teachers' and administrators' perceptions of languages other than English. In one interview, a high school principal expresses concern that ELL newcomers "don't have a language" (p. 103). Heineke (2015) also elicits deficit perceptions of Spanish use in and out of school from Arizona teachers in a focus group. The researchers attribute these views, at least in part, to the dominant cultural view of bilingualism in Arizona. Ruiz (1984) posits that the language-as-problem orientation depicts limited proficiency in English and first language maintenance as inherently linked to social problems, economic disadvantages, and "intellectual limitations" (p. 8). These concerns are noticeable in the interview responses of Arizona students and educators, many of whom reflect the state's discourse that the home language is not only a problem but a *barrier* to English proficiency.

Language-as-problem. The language-as-problem orientation may be most explicit in English-only contexts, but this orientation may even be seen in bilingual education programs.

Early-exit transitional bilingual education (TBE) programs in particular maintain English-acquisition as their goal, rather than bilingualism and biliteracy. These programs serve only language-minority speakers, and they utilize ELLs' home languages, but primarily as a means of transitioning ELLs from their home language to English in order to enter mainstream, English-only classrooms within three years. As a result, the program models themselves risk conveying that the home language is merely a short-term resource and may underutilize that resource by putting students into English-only classrooms before they have the appropriate level of English proficiency (Paciotto & Delany-Barmann, 2011). Maintenance of the home language may be seen as a problem in that it is a barrier to overcome in order to attain the English that students will eventually need to succeed in classrooms that no longer utilize their home languages.

Language-as-resource. Perspectives of language as a resource can take many different forms, including the view of multilingualism as an advantage in an increasingly globalized world and also, more immediate to school contexts, as a tool for students to transfer skills from one language to another. Multilingualism as a transnational asset is regularly cited as a benefit of two-way immersion (TWI) dual-language programs (Valdez, Freire, and Delavan, 2016; Johnson and Johnson, 2015). In this case, multilingualism is presented as a stepping stone to success in a globalized world, meant to benefit both ELLs and their native English speaking peers who enroll in these programs. Lindholm-Leary (2005) proposes that as the Latino and Asian American populations of the United States increase over the next few decades, the job outlook for today's youth will change with the demographics. This view gives bilingualism status as a resume-builder and career skill that would ideally help native English speakers and speakers of languages other than English in the job market, although some researchers caution that an economic perspective on second language acquisition may contribute to a privileging of

the middle to upper-class English speakers who enter TWI programs as well as an elevation of English over the program's partner language (Valdez, et al, 2016; Cervantes-Soon, 2014).

Valdez, et al. (2016) use discourse analysis to investigate Utah policy documents regarding DL programs for indications of the propagation or countering of English hegemony in the language education services offered to English language learners and their native English speaking peers. The researchers find explicit acknowledgments of the value of multilingual communities; however, these acknowledgments are contradicted by a positioning of DL partner languages as valuable to English speakers as an economic resource. According to Valdez, et al., this situates languages other than English primarily as resources to native English speakers competing in the global economy. The researchers support their conclusions with findings that Utah policy documents place greater importance on TWI programs that include a large number of native English speakers while effectively ignoring the DL models that mainly serve English language learners (such as developmental bilingual education). Researchers have concluded through interviews with ELL students that the home language can symbolize intimacy and family (Johnson & Johnson, 2015) in addition to its oft-reported benefit as a scaffold for language development and academic learning in English (Lindholm-Leary, 2005). This suggests that the overlooking of home languages as resources to ELLs in any language education service could significantly impact the school experiences of many students.

Cervantes-Soon points out that in North Carolina, TWI education is handled by the field of World Language Education (WLE), which separates it from the field of English as a Second Language (ESL). Regarding this separation, along with an emphasis on languages other than English as target languages for English speakers, Cervantes-Soon suggests, "language might be perceived more as a commodity than as a tool for significant cross-cultural understanding" (p.

71). The positioning of English as the dominant and most desirable language indicates a possibility of orientations *within* orientations, in this case leading to a one-sided benefit of language-as-resource. Palmer (2009) warns that this can lead to classrooms in which teachers have “unwittingly imposed a monolingual English norm on the children” (p. 190). Researchers suggest this one-sidedness may be addressed, whilst maintaining an additive orientation towards bilingualism, through inclusion of the voices of ELLs’ families (Figueroa, 2013; Cervantes-Soon, 2014) and local educators (Johnson, 2010) in the development of programs, services, and language policies.

In addition to economic and career concerns, the language-as-resource orientation can be found in approaches to bilingual education that encourage cross-cultural cooperation and understanding and use of students’ home languages to bolster academic progress in, and acquisition of, English. Palmer (2009) raises several possible benefits for all students in dual-language classrooms, in this case regarding a Spanish-English TWI program:

The children themselves can provide strong English models to Spanish speaking students, and by their lacking in Spanish skills (the language required for success in the classroom), they can reinforce to Spanish-speaking students the value of their own Spanish language competencies. This elevation in status for Spanish and Spanish-speaking children could tip the scales for them and result in improved academic performance and bilingual/biliterate competency for all of the children (p. 180).

These benefits illustrate the possibility for students and teachers to view language as a resource as they come to recognize the strengths inherent in each language and the equal benefits each may supply to speakers of the other language. Palmer’s ideal of Spanish-speakers recognizing the value of their own competency in Spanish represents a possible mitigation to the

possibility of low-esteem, and therefore a lack of recognition of the resource value, for ELLs' home languages in dual-language programs.

Interplay of language orientations. Although these orientations are separate from the language-as-right orientation, Ovando (2003) posits that political, economic, and social forces that affect the status of different languages, such as wars and geographic expansion, can impact both the political and social responses to language rights and language use. Ovando's point ties into Ruiz's (1984) assertion that the proposed language orientations are distinct but not incompatible, and may emerge together in some situations. It may, therefore, be useful to not only acknowledge the existence of these different orientations but to identify the ways in which the ideologies that reside within the orientations may shift with the times and sociopolitical climate.

In presenting an historical overview of language policy decisions in courts at the state and federal level, Powers (2014) addresses these shifts and the ways in which orientations intertwine. Powers argues that language rights decisions of the 21st century have represented a regression from the beneficial decisions in the Civil Rights era. Powers proposes a new orientation, that of *language-as-barrier*, which amalgamates the language-as-problem and language-as-resource orientations and includes of view of students' home languages as a resource only insofar as it is a means to learn English. Powers suggests this orientation is a frequent consideration and result of court cases, tying it therefore to the language-as-right orientation.

Ovando (2003) suggests that an understanding of the forces behind the language policy debate is essential for educators and administrators as it may help them work together to create and enact language policies, which take the shape of various programs for ELLs. Ovando challenges the notion that language ideologies are static or even stubborn, and he suggests that

this fluidity of ideologies can work in the favor of emergent bilingual students and their educators most effectively if those in charge of creating and implementing language policies understand the sociopolitical climate affecting the ideologies. Ovando claims, “since bilingual education is much more than a pedagogical tool, it has become a social irritant involving complex issues of cultural identity, social class status, and language politics” (p. 14). The realities behind language orientations, according to Ovando, are “the basis on which bilingual education is either loved or hated” (p. 14). This ties orientations, and especially awareness of those orientations, to teacher practice and advocacy on behalf of ELLs and their native English speaking peers.

Lund and Lee (2015)’s study of pre-service teachers participating in a service-based learning project in immigrant communities in Canada supports the role of sociopolitical awareness in teachers’ orientations toward students. In pre-project interviews, research participants expressed orientations toward language-as-problem, with statements that indicated a belief that immigrants’ limited English proficiency made them less Canadian. Post-project interviews revealed shifts in teachers’ perceptions as they engaged in analysis of the lived experiences and sociopolitical realities of immigrants as well as their own privileges and biases.

Ovando (2003) claims antipathy toward bilingual education is “rooted in nativistic and melting pot ideologies that tend to demonize the ‘other’” (p. 14). If this is the case, Lee and Lund’s (2015) pre-service teacher participants, with their resource-oriented post-project assertions that they’ve come to see ‘the other’ from a more personal and empathetic viewpoint, may indicate that language orientations can shift not only with time and place but also within individuals.

Planas and Civil (2013) further support the idea that language orientations can combine in certain contexts and illustrate the appearance of language orientations in an education setting through a qualitative study of a mathematics classroom consisting only of ELLs. The researchers find that ELL participants demonstrated more confidence performing math work in their home language (Spanish), and teachers suggested students feel disempowered in classes with native English speaking peers. For these ELLs, the home language is a resource they can draw on to scaffold their academic learning, often cited as a benefit of using the home language in instruction, but Spanish becomes a problem when ELLs are placed in a situation in which they interpret signals restricting its use. For Planas and Civil, this context is situated within an additional orientation, *language-as-political*, which holds “a potential for transformation through processes that place certain languages and their speakers at a distinct disadvantage” (p. 363). Like Ovando (2003), Planas and Civil’s (2013) study links language policy and sociopolitical context with the suggestion that awareness of this sociopolitical reality can help administrators, teachers, and students recognize the language tensions and potential for change.

Levels of Policy and their Impact on Schools

Policy at the macro-level. Language policy and planning is often addressed on a macro- and micro-level scope, with differing degrees of power, influence, and responsibility between and within each level. The legal decisions and rights activism examined by Powers (2014) highlights the shifting status of language rights at the federal, or macro-, level. It is at this level that the language-as-right orientation is most often observed. According to Powers, despite a preference to leave education decisions up to state and district courts, federal judges and legislators have affected language policy and practice within decisions in many instances, most noticeably in cases over school finance and segregation. Macro-level language policy decisions

at the federal and state levels have had major impacts in the United States in the 20th and 21st centuries. These may occur in additive ways, such as the Bilingual Education Act (BAE) of 1968 which, according to Ovando (2003) initiated the implementation of many bilingual and ESL programs throughout the US in order to “address the academic, linguistic, sociocultural, and emotional needs of students from culturally and linguistically diverse backgrounds” (p. 8). The BAE was a major step toward servicing and inclusion of ELLs, even if the act itself did not go so far as to require or even encourage use of ELLs’ home languages.

Macro-level policies may also lead to subtractive services, which occurred in the early years of the 21st century through the voter-initiated English-only education mandates in Massachusetts, California, and Arizona. Ovando’s (2003) proposed fear of the ‘other’ may play a part in restrictive policies; indeed the assertion that language policies are often expressions of deeper sociopolitical events and ideologies is supported by the likelihood for votes in favor of these mandates to occur in conjunction with a local or national discourse that presents a correlation of the English language and American identity, a fear of disunity caused by multilingualism, and a misconception that language acquisition occurs most successfully in full English immersion (de Jong, 2008). The English-only laws put in place requirements for ELL students to be educated in programs following the structured English immersion (SEI) model, in which instruction focuses on English language acquisition and content instruction is delayed until students are considered proficient enough to move into a mainstream classroom without language supports. SEI programs’ emphasis on language acquisition, often at a quick rate of one year, delays ELLs’ academic content learning and may lead them to lag behind peers in mainstream classrooms in academic achievement (de Jong, 2008; Lillie, Markos, Arias, & Wiley, 2012). While restrictive policies may be promoted as being borne out of concern for all

students, such programming belies a conception of language as a problem, as ELLs' home languages are not only unrecognized as potential resources and supports, they are additionally discouraged as barriers to education.

The three English-only mandates passed by state voters may be the most explicit examples of restrictive macro-level language policies, but implicit restrictive policies with language-as-problem orientations can be found in other educational legislation. Since the passage of the federal No Child Left Behind Act (NCLB) in 2002, many researchers have found links between high-stakes testing and the pressure-filled accountability practices used by states to align with the legislation and a diminishment of bilingual programs and services, even in states with relatively pro-bilingual stances (See e.g. Menken, 2013; Menken & Solorza, 2014; Palmer, Henderson, Wall, Zuñiga, & Berthelsen, 2016). Menken (2013) points out that since 2002, enrollment in New York City bilingual programs has decreased exponentially (40-22%), while enrollment in ESL programs has simultaneously increased. Menken notes, "Thus, the vast majority of the 154,466 emergent bilinguals attending city schools are receiving instruction in English only" (p. 210).

Illustrating Ovando's (2003) claim that language policies, and the ideologies that co-occur, shift with the political climate, voters in California elected to repeal the English-only mandates in 2016, while in 2017 Massachusetts lawmakers were negotiating an end to the state's bilingual education ban.

From the macro- to the micro-level. Whether or not they are restrictive, policies passed down from the federal and state macro-level may not be put into practice with their original intent intact, partly because of the complex and shifting levels they must pass through on their journeys from policy to program. Ricento and Hornberger (1996) compare these levels to layers

of an onion, in which the outer layer starts with the macro-level of federal and state actors and becomes more localized as the layers move toward the center. The inner layers of this metaphorical onion, the micro-level of LPP, are the districts, teachers, and students for whom language policy often has the most significant impact, even when enacted in a top-down manner. Oftentimes, policies are subject to varying interpretations within a school district and even within a school. Increasingly, attention is being paid to the administrators, teachers, and students who populate the micro-level to understand the ways in which macro-level policies are put into practice. The literature points to such issues as vague policy language, miscommunications, differing agendas between and within policy levels, and inadequate teacher preparation as some causes of variation in policies. Several researchers make note of the possibility of resistance to macro-level policies on a micro-level scale, which can occur in what Johnson (2010) calls “implementational and ideological spaces.”

Lillie, et al. (2012) investigate the implementation of SEI in Arizona following the passage of Proposition 203. Although the language of the law does not explicitly prohibit students’ use of the L1, some teachers are observed to extend the monolingual policy to all teaching and student interaction with signs that say “Speak in English” and encouragement of policing of peers’ home language use. On the other hand, several other teachers in the same school district allow students to use their home language to communicate with each other and use bilingual materials to assist in language acquisition and schoolwork. These varying interpretations of Proposition 203 indicate that even if a policy does not explicitly refer to students’ home language as a resource or problem, teachers may interpret the policy either way.

Conversely, de Jong (2008) presents an example of teachers taking advantage of non-explicit language in Massachusetts’ restrictive policy in a case study of an elementary school

after the state's English-only mandate, Question 2, legislated a requirement of SEI. Like Proposition 203, Question 2 does not explicitly outlaw the use of students' L1 in classroom communication, although de Jong finds that some teachers did interpret the law as conveying that mandate. The administrators and teachers at the focal school were able to receive waivers necessary to continue the bilingual education the school had offered before Question 2, although in a more limited and restructured capacity. Several bilingual teachers, including those who transitioned to SEI, report allowing uses of students' L1 in class, referring to home language use as a resource for students' learning. In the case of this Massachusetts school district, the implementational spaces within a language-as-problem macro-policy were utilized by some teachers at the micro-policy level to create language-as-resource environments.

In addition to variations in the way the language of the English-only mandates are interpreted, expectations placed upon districts and schools in a top-down manner may cause confusion and undermine educational practices and program designs. Lillie, et al (2012) find that teachers report feeling confused by expectations placed upon them by the new law, leading to uncertainty about how to implement procedures. This aligns with Heineke's (2015) findings in a teacher study group based in an Arizona elementary school, where new mandates for English language instruction and program design were passed down from the state throughout the year with expectations that they be put in place immediately, sometimes with little guidance.

Heineke's findings suggest that such pressures from state mandates led to rigid compliance with English-only procedures until after state audits had passed. This in turn appears to perpetuate distrust of bilingual education practices in teachers' discourse as the study's teacher participants, after the state audit is finished, begin discussing the possibility of allowing students to use their L1 as a scaffold to learning English. Ricento and Hornberger (1996) point out that

local and societal discourses may influence teachers to such an extent that they internalize the discourses and apply rules that may not have been explicit in the policies themselves, but which reflect community and state beliefs about education.

Micro-levels may reinterpret macro-level policies in less restrictive states as well. Washington state's language policy encourages bilingual education, and is in fact funded through the Transitional Bilingual Instruction Act (TBIA). However, the same non-committal language that creates the implementational spaces for home language use in restrictive-policy states has led to a result wherein in the majority of Washington's programs for ELLs are not bilingual, despite the TBIA's name (Stephens and Johnson, 2015).

Stephens and Johnson examine a policy promoting sheltered instruction (SI), a popular ESL program, and find suggestions that shifting interpretations and miscommunication between levels of policy may change a relatively permissive law into an English-only policy. In SI programs, ELLs spend the day in general education classrooms, with supports, such as pull-out classes in a separate room with an ESL specialist, and SI strategies used by the general education teacher. SI strategies may include visual supports, collaborative group work, and graphic organizers; all of these are intended in part to ensure the use of comprehensible input (Krashen, 2008), which requires that a new language be presented in clear, contextualized ways appropriate to a language learner's proficiency level.

Despite stated orientations toward language-as-resource, the teachers observed by Stephens and Johnson are found to mostly, and irregularly, make use of SI strategies only in cases in which they believe they can be used for all students; they demonstrate a lack of awareness that they are meant to be the main ESL providers with supplemental support from the ESL specialist, rather than vice versa; and one teacher, to her frustration, prioritizes behavior

management issues over the instructional needs of ELLs. Dabach (2014) points out, “Sheltered versions of traditional mainstream courses aim to increase access by targeting instruction to EL students’ needs that may, otherwise, go unmet” (p.99). However, due to lack of clarity and communication between the macro-level and micro-level in Washington state, as well as a possible limited knowledge at the macro-level of daily classroom realities, the needs of ELLs were going unmet in a school district using SI strategies. According to Stephens and Johnson, “it was not made clear to the teachers that according to state and district language policy, they *are* the [ESL] program” (p. 40).

Educator training as a factor. One common thread running through much of the literature is the suggestion that teacher training and appropriate, sustained professional development programs play a role in affecting orientations toward language as well as determining consistency and efficacy of program implementation. Lillie, et al. (2012) find encouragement of home language use to have a positive correlation with a teacher’s holding of a bilingual education endorsement. Stephens and Johnson (2015) discover indications that professional development for SI was brief, incomplete, and inconsistent with the training teachers expect before implementing strategies, which the researchers indicate may be partly responsible for the teachers’ accidental implementation of an English-submersion classroom.

Langman (2014) suggests that top-down approaches to professional development for teachers of ELLs, which suggest new curricula or approaches, may be “disconnected from daily practice” (p. 197). The same problems that are suggested to develop from many top-down policy implementations, such as vague expectations and guidelines, are implicated by Langman in leading to ineffective professional development for content-area teachers of ELLs. In interviews with secondary-level science teachers, Langman finds that teachers indicate a desire for training

in the language demands of their current curriculum and recommendations for strategies and tools for implementing modifications to make language and content comprehensible for ELLs.

In an analysis of international language-in-education policies and their impact on micro-level pedagogies, Liddicoat (2014) argues that by either explicitly recommending pedagogical changes or by rendering pedagogy invisible in language-policy documents, macro-level policy designers may push the responsibility for resolving pedagogical problems down to the micro-level, specifically teachers. According to Liddicoat, in countries such as Japan and Malaysia, legislators' attempts to address language policies' shortcomings have not addressed the core problems causing the shortcomings, which then manifest at the micro-level. This neglect may then create inconsistency and uncertainty at the micro-level and may even create additional barriers to effective teaching and students' language acquisition. Although Liddicoat focuses on international settings, the literature suggests these results can be observed in the United States in situations in which policy mandates are unclear and teachers are left to prioritize students and educational practices through curricular mandates for which they may not have received proper training.

Without appropriate training and professional development, results may range from inconsistency in application of English-only or bilingual school policies (de Jong, 2008; Lillie, et al, 2012) to misapprehension of the appropriate use of strategies for ELLs (Stephens & Johnson, 2015). As use of the home language has been found to lead to positive academic outcomes for ELLs (Lindholm-Leary, 2005; Planas & Civil, 2013) while English-submersion and inconsistent programming may result in lowered self-esteem and compromised academic achievement (Lillie, et al, 2012; Dabach, 2014), professional development that addresses the needs and desires of

teachers and students may help overcome some limitations that emerge in the flow from macro-level policy to micro-level practice.

State laws regarding equitable services and education for ELLs are meant to inform the decisions and practices of all school personnel, and in fact could be seen as significant guidelines for administrators and instructors who may not be certain of their roles in the education of linguistically-diverse learners. Rather than being the sole responsibility of ENL and bilingual staff, regulations can be interpreted as conveying an ideal of school wide services and collaboration. This calls for appropriate professional development. This concern does not only apply to teachers at the micro-level, as administrators are important arbiters of language policy whose decisions may be influenced by the amount and type of preparation they have to work with ELLs. Menken and Solorza (2014) discuss the influence of formal coursework and professional development specific to language acquisition and the needs of ELLs on New York City principals' decisions to either continue bilingual education programs or dismantle them in favor of English-only services. A key finding is that principals who chose to dismantle their bilingual programs had no formal training for working with ELLs, while those who chose to continue the programs in opposition to external pressures had completed coursework and certifications in bilingual education or TESOL.

Menken and Solorza suggest that those who have no prior coursework, even with practical experience, misunderstand principles of language acquisition and underestimate benefits of bilingual education, notably claiming students will learn better in English-only environments. Interviews suggest these principals, facing the demands of testing pressures and fears that ELLs will lower annual yearly progress (AYP) results, choose to implement English-only ESL-based services to align with English-only tests. Menken and Solorza recommend

further training in language learning and linguistically-diverse student populations to potentially change deficit paradigms into language-as-resource based approaches. This recommendation is supported by interviews with bilingual school principals who credit their academic preparation for inspiring them to work with the community, families, and school staff to design creative bilingual programs that result in high assessment achievement, even on English-only tests.

State policy changes and debates

The role of assessments in ELL-related practices and educator decisions. Menken and Solorza's (2014) study raises the topic of high-stakes assessments and accountability as a macro-level determiner in the type and quality of services offered to ELLs, as well as micro-level agents' orientations towards ELLs, their languages, and their needs. In a related analysis of the effects of NCLB accountability on bilingual education programs in practices in New York City schools, Menken and Solorza (2014) argue that NCLB has become a "restrictive language education policy" (p. 97). Actions of local administrators in eliminating bilingual programs and limiting entrance of ELLs into schools due to high-stakes accountability pressures are given as evidence for this claim. School leaders express worry that teaching in two language will compromise English language development and therefore not adequately prepare bilingual education students for English-only tests (Menken and Solorza, 2013, 2015). The denial of access to entire schools accentuates the deleterious consequences that may result from policy pressures, especially when they impact policy actors at multiple levels. The affected ELLs were kept from the provision of home language education, but additionally their access to equitable education was reduced due to their status as ELLs.

Palmer and Henderson (2016) find similar impact of testing pressures on administrators' and educators' language-of-instruction and classroom practice decisions in two Texas schools

offering both bilingual programs and ESL. Results of observations and interviews indicate teachers and administrators at both schools were influenced by Texas' STAAR math and reading tests, in one school contradicting many of the goals of bilingual education in order to best prepare students for the tests, as well as using test results to describe students and their language and academic abilities. In one school, teachers are found to talk less about DL program implementation as the dates of the tests grow closer and a Spanish language arts block, designed in part to help students maintain their home language of Spanish, was used instead for test preparation. Unlike the New York City ELLs attending schools investigated by Menken and Solorza (2013, 2014), the students of Palmer and Henderson's (2016) Texas study are allowed to take the high-stakes tests in either Spanish or English. However, Palmer and Henderson find that this seemingly fair allowance undermines the schools' bilingual education efforts, as teachers focus on students' strongest languages in order to pass the tests, rather than striving for bilingualism and biliteracy. In this case, Texas' language-in-education policy, a non-restrictive mandate which allows for bilingual education, is subverted by high-stakes testing and accountability concerns. Teachers and administrators with additive views toward bilinguals and bilingualism come to view bilingual education as a barrier to the assessments that are seen as a higher priority.

In many cases, this prioritizing of test preparation leads to a language-as-problem orientation, notable in Menken and Solorza's (2014) interviews with administrators who believed home language instruction may lead to lower English-medium test scores. This ideological result of macro-level pressures is found regularly in literature centered in locations across the United States (see also Lillie, et al, 2010).

Heterogeneity of the ELL subgroup, testing pressures, and variations between states are brought to attention by research into the language and content demands of required state standardized tests. In a case study of two newcomer ELLs from Cambodia starting school in Texas, Wright and Li (2008) find that the Texas state math test (TAKS) contains linguistic and content demands far beyond the English and math knowledge the girls have at the time of taking the test. Additionally, in a content comparison between TAKS tests and worksheets given to the students by their math teacher, Wright and Li observe that advanced math-specific vocabulary and complex syntax are used in the test but never appear in the worksheets, giving newcomer ELLs little practice. While assessment content is beyond the scope of this literature review, the requirement that ELLs take state assessments with inadequate preparation has implications for fair and equitable education. Such requirements have loosened since No Child Left Behind was replaced by the Every Student Succeeds Act (ESSA), although ELLs will still have to take state tests with a more lenient period of time between arrival and assessment.

For ELLs who can have the option of taking assessments in their home language, linguistic demands of tests may not be an obstacle. However, this is not an option for everyone. At the time of Wright and Li's (2008) study, Texas only offered the TAKS math assessment in Spanish and English. This means that the newcomer Cambodian students, whose home language is Khmer, had no access to an assessment they could best comprehend. In addition to creating equitable schools, assessments, and curricula for ELLs, policymakers and educators must be aware of the heterogeneity of the ELL subgroup. This lack of pluralistic resources pushes language to the status of language-as-problem, as students who do not have access to resources in the home language but must complete work at a linguistic level at which they are not yet proficient are in essence denied equal access to schooling and achievement.

de Jong (2008) mentions the need for studies of language policy and practice to take into account the local context in which they end up situated once at the micro-level due to variations within and between localities. This issue is highlighted by the varying results macro-level pressures have on micro-level actors in different contexts. In Texas, a language-as-resource approach to bilingual education shifted into a language-as-problem discourse amongst teachers and administrators as testing pressures drew nearer and the beneficial effects of academic preparation for teachers of ELLs was mediated by these pressures as well (Palmer & Henderson, 2016). In Massachusetts, the ESL academic and professional preparation led to a language-as-resource viewpoint in a school immersed in a language-as-problem political climate.

High-stakes testing is often indicated in the literature as a reason for school districts deprioritizing English language services and putting pressure on ELLs and their instructors (Menken, 2013; Lee & Hawkins, 2015). Collins (2015) raises a further objection to high-stakes testing with his position that these pressures are both the consequence and the justification of such testing. Collins objects to the use of the single category of ELL to group a heterogeneous population of learners. It is suggested that this classification is used to justify increased scrutiny of ELLs as a high-risk population with the implication that low achievement stems solely from language proficiency. Collins argues that this homogenization of ELLs simultaneously enables ignorance of sociocultural factors that play a part in low achievement of *all* student populations in schools with high populations of ELLs. One result, Collins claims, is an increase in auditing of ELLs and a decrease in the language services offered to them. Collins further implicates NCLB's allocation of the responsibility for ELL-service funding to states, rather than the federal government, in the diminishing amount of money and resources applied to bilingual and even non-bilingual ENL programs. Collins claims that funds are not adequately distributed, and

school districts may as a result fall out of compliance with policy mandates for bilingual education due to budgetary concerns. For students and staff in high-needs schools, limited access to resources and equitable programs further impacts opportunities for high achievement.

Teacher responses to new policy initiatives. As policies shift at the meso- (state) and micro- (school and district) levels, considerations of the impact on teachers may be needed to implement successful language programs and services, or at least to understand the reasons for differing interpretations of new policies. Foreman (2016) presents a study of one Washington district in which a new DL bilingual program caused conflicting feelings among teachers while vague directives from district leaders did little to assuage concerns and confusion. In interviews with teachers of both content and language classes, Foreman gleans attitudes of ambivalence toward bilingual education as well as mandated policies. While many instructors are enthusiastic about the concept of bilingualism and the possibility of a linguistically and culturally-diverse staff and student body, the same instructors express concern about job security for monolingual instructors, limited resources, and the prioritization of English acquisition.

Foreman also finds that teachers in the focal school district feel resistant to policies they see as micromanagement from higher levels of educational decision-making, especially when those mandates are given with little guidance or insight into the daily practice of instruction. Teachers in Foreman's study report conflicting feelings of dismay over strict policy directives and desires for officials to have a more active role in program and policy implementation.

Hopkins (2016) further emphasizes district and state policy decisions as integral aspects of a multi-level policy model. As a result of interviews with teachers from bilingual language backgrounds in pro-bilingual and English-only settings, Hopkins argues that in addition to teachers' beliefs about language, influence over language-of-instruction may also be determined

by districts either conforming to or subverting state policies in both restrictive and non-restrictive contexts. Like the pro-bilingual Massachusetts teachers and administrators observed by de Jong (2008), teachers in Hopkins' (2016) study report using bilingual practices even in states that mandate English-only. Conversely, some teachers in states that allow or even require bilingual education express skepticism of bilingual education and reluctance to use students' home language in their classrooms. This reluctance stems from personal and professional experience with bilingual and monolingual education.

Bunten (2014) offers a case study of a teacher integrating her personal and professional experience as a bilingual learner and teacher to make decisions regarding language-of-instruction in a restrictive context. Bunten's focal teacher, Anita, uses her perspective as a former ELL and a bilingual teacher in Massachusetts to view the political climate and societal reactions to Massachusetts' English-only policy. Bunten's interviews reveal Anita believes the attitudes toward bilingual education are changing due to a better acceptance of dual-language education and a perception that the English-only policy is not helping students, ELL or non-ELL. Since the time of Bunten's study, Massachusetts has begun a transition out of its English-only stance to a state that will allow bilingual education and instruction in students' home languages. As suggested, this is in part due to findings that indicate students have not benefited from an English-only policy in academic content achievement or English language acquisition (Larkin, 2017). Massachusetts' Question 2 was passed in 2002, 31 years after the state was the first in the nation to mandate transitional bilingual education in districts with 20 or more ELLs with the same home language (Larkin, 2017). For many legislators and educators in the state, it has fallen out of favor less than two decades later, demonstrating the rapid rate at which even laws and policies that alter entire state educational systems can change and shift.

Nevertheless, the concerns raised by both pro- and anti-bilingual education advocates in de Jong's (2008) study over inconsistent and ineffective bilingual programs persist as an issue on both sides of the debate (Toness, 2017). Policies and attitudes may swing from one extreme to another, or they may be amended and altered to account for new ideas or to address growing subgroups of students. Whatever the cause for change, though, policies must address any problems that existed previously. For legislators and policy enactors, this may mean being aware of the history of educational policies in the state. If the policy changes in Massachusetts are, at least in part, a reaction to the perceived inadequacy of English-only and the structured English immersion program currently used, these inadequacies must be remedied. Additionally, though, the problems that existed before Question 2 which made even pro-bilingual advocates skeptical of Massachusetts' bilingual education must also be addressed in order to create a program that serves ELLs most effectively and helps educators understand and perform their roles with minimal confusion or frustration.

Sociopolitical context and policy. The changing beliefs and approaches toward language rights and educational equity for ELLs in the United States is well-documented in the literature (see eg. Ovando, 2003; Wiley, 2002; Powers, 2014). Ovando (2003) highlights several periods of various orientations toward language of instruction in school, including the Opportunist Period of the 1960s, notable for civil rights movements and decisions such as *Lau v. Nichols* and *Castañeda v. Pickard*, which developed a three step test for determining whether a program for ELLs was appropriate: that the program be anchored in sound theory, that adequate resources and staff are provided, and that the program includes practices and results in language and the content areas. Ovando points out that pro-English-only movements of the 1970s to

1990s effectively reversed and suppressed many of the advances that came before, reiterating the possibility for policy that affects ELLs to become tied up in the sociopolitical climate of the era.

In recent years, debates over immigration have been taken up with renewed fervor. Ovando (2003) suggests that suppression of home language access for language minority students in the early years of the 20th century was brought about in large part by anti-immigrant sentiment fomented by war-induced xenophobia. Anti-immigrant discourse can be found in recent years in media coverage, but likewise social justice movements are gaining widespread attention in media and political spheres. Lee and Hawkins (2015) find indications that in some rural school districts in Wisconsin, negative views toward immigrants lead some community members to complain about provisions for ELLs and may encourage deficit views among school staff.

A common refrain in the debate over bilingual education is the notion that older generations of immigrants came to the United States with a motivation to learn English quickly which translated into a rapid acquisition of the language. While this may be the case for some, the implication that desire for bilingual education and language services are a modern phenomenon is contradicted by education historians. Kloss (1977) details the long and complex history of bilingual education in the United States, exposing a varying and sometimes contradictory tradition. Kloss (1977) points out that some non-English languages were allowed in school to transition students to English, some were required due to a lack of necessity for English in immigrant communities or due to demand from speakers of languages other than English, and some were allowed in limited amounts to be taught as “foreign” languages. Kloss also notes that some of these bilingual programs have been short-lived and some have lasted for

decades, receding and returning according to needs and, supporting Ovando's (2003) points, sociopolitical context such as war.

Despite the links between attitudes and policy and practice, Lee and Hawkins also point out the variability of attitudes toward immigrants; thus, while anti-immigrant orientations may affect the responses to and creation of policy, as well as its implementation, it may not be the driving factor even in restrictive policies. Certainly, states with restrictive policies are not the only areas where anti-immigrant discourse occurs; likewise, pro-immigrant discourse may be heard in states such as Arizona or California, which have had high-profile English-only movements in recent years.

In the most additive circumstances, policies are ideally designed with an eye towards equity for all students. As the majority of ELLs enter into a school system that is different from their cultural and linguistic backgrounds, legislative bodies and educational agencies must work appropriately to design educational programs and instruction to benefit students from a wide variety of backgrounds. Even in states with high ELL populations and pro-bilingual policies, however, equitable education may be undermined by local and national factors. As de Jong (2003) mentions, contextual factors are important to consider in policies and their outcomes, and other issues may influence ELL policies and their ultimate interpretations by policy actors. Potential impacting issues include concerns over funding (Collins, 2014), misunderstandings about second language acquisition (Menken & Solorza, 2014), and the influence of other educational policies, such as No Child Left Behind (see eg. Menken & Solorza, 2014; Collins, 2015; Palmer & Henderson, 2016).

In an analysis of four Chinese educational policy documents, Wenbin (2012) finds evidence that Chinese policies, like those in the United States, have been informed by the

broader political climate, leading to substantial changes that reflect the societal discourse of each respective period. Wenbin finds that educational policy focus has shifted from an emphasis on order and the individual as an asset in the 1980s to a greater concern for equitable education and individual rights in 2010. This follows movements in other countries, in which equity and social justice are becoming greater concerns either in policies themselves or in movements to effect political change in education.

Research Questions

Wiley (2002) notes that language policies don't simply exist as official regulations about language rights but may occur as implicit and covert policies that stem from related laws and beliefs of those who have a say over language use. In education, those with a say may include policy-makers, administrators, teachers, and even citizens who vote and circulate particular discourses. All of these groups also have the ability to advocate for official policies that reflect their ideals of a fair and equitable education for ELLs. This study is designed to investigate, through comparisons of themes and changes, the differences and similarities between two drafts of CR Part 154 and the ways in which these aspects of the regulations may affect or reflect sociopolitical context and educational initiatives designed to serve English language learners across New York State. To guide the study, the researcher developed the following questions:

1. How have the versions of Commissioner Regulations Part 154 changed over time?
2. How have the changes to CR Part 154 affected the landscape of English language education across New York State?

Chapter 3: Methodology

Intended Audience

The researcher intends to identify the changes over time in New York's ELL policy, particularly in regards to the primary ELL policy document, Commissioner Regulation Part 154. Changes in policies may occur in response to states' and districts' current needs due to demographic shifts, as reflections of sociopolitical discourse and events, or as an attempt to revise or adjust perceived inadequacies in previous versions of legislation. This study seeks to determine how CR Part 154 has changed from the version enacted in 2007 to the most recent, and greatly expanded, version enacted in 2014 as well as how these changes may offer perspective on important issues to address in current New York State ELL education.

This research is intended to offer educational officials, administrators, and teachers an in-depth view of an ELL policy that has significant implications for all those with a stake in the education of English language learners. Although policies related to ELLs have been well reviewed in the literature in the first two decades of the 21st century, an abundance of research focuses on the effects of English-only policies in restrictive states and impacts specific to assessment and No Child Left Behind. Since the demise of NCLB, the revision of Part 154, and a changeover in federal education administration with a new Executive branch, the landscape of education policy is evolving and is a topic of much discourse and debate. Part 154 has received sparse coverage in all of its iterations, although it may be viewed as an especially consequential policy in a state where ELL enrollment remains high and many districts find their ELL populations growing.

As state policies get passed down to districts and schools, they may not be interpreted as intended by the policy authors (see eg. Johnson, 2015; Collins, 2015). Meanwhile, researchers

are increasingly assertive that actors at all levels of policy exert great power over how regulations are interpreted and implemented. If educators are aware of the ways in which policies interact with sociopolitical context and other policies, past and present, they may make clearer, more effective decisions in their roles in the education process and in advocating for students.

Finding a Research Topic

The researcher investigated topics related to educational policy and ELLs as well as language policy in previous courses required for the TESOL program. She attended school in New York State from kindergarten through grade 12, and she has worked in Western New York school districts as a substitute teacher and in TESOL course field placements. She has observed changes in demographics, program requirements and, sometimes most obviously, terminology regarding ELLs and ENL programs. Her experiences and previous research led her to an interest in understanding how policy shifts reflect and alter needs and beliefs of both the educational system and society as a whole. Having been influenced in her academic interests by the tumultuous sociopolitical climate in which consequential legislation comes and goes at a rapid pace, the researcher has sought to identify the changes in New York's ELL policies with an aim to understand how current policies may be affected by discourse, demographics, or research-based contemporary views on best-practices in education.

Conducting the Literature Review

The researcher began the literature review process in a previous course with a research project on language policy in the United States. This project largely focused on contemporary language policy, specifically post-2000. During this project, literature was gathered with the highest frequency topics being educators' perceptions of language policies, the effects of

restrictive language policies on student performance and classroom practice, the impact of NCLB and high-stakes assessments on ELLs, and historical and political contexts for language policies.

After identifying a research topic for this project, the researcher expanded her search beyond bilingual language policy to include a more in-depth inquiry into international education policies, the sociopolitical context for policy decisions and changes, teacher training requirements, and assessment and placement of ELLs. Expanding the scope of the search allowed the researcher to make comparisons between different contexts and time periods, within the United States and between countries.

The main sources used for research were the ERIC database and Academic One Source, as the researcher has found these two databases to contain the most relevant and numerous collections of educational literature. Books obtained from the State University of New York at Fredonia's Reed Library, through interlibrary loan, and from department professors were also used. In the course of writing the literature review, the researcher identified states in which significant policy shifts have occurred in recent years, selected newspapers distributed in those states, and performed searches on the newspapers' websites. The articles obtained enabled up-to-date and, ideally, objective accounts of current issues in educational policies with viewpoints from multiple concerned parties as well as some details on the histories of state policies.

Identifying a Policy Focus

ELL policy in education is a major social and political issue in many states. In addition to the high-profile policy cases in English-only states, other areas are experiencing shifts in demographics and educational needs. Some states are seeing their populations of ELLs grow as new destinations for immigrants; some are welcoming refugees who may be additionally

classified as students with interrupted formal education (SIFE) and therefore coming into schools with unique needs; and some states are increasing bilingual services or changing existing programs.

After initially considering a comparison between two states' policies, the researcher narrowed her focus to New York State. New York has recently implemented some alterations in its ELL policies, impacting school districts across the state in myriad ways. New York is home to one of the highest ELL populations in the country, concentrated mostly in New York City but spread throughout the state in rural villages, smaller cities, and suburban areas. New York's wide geographic and demographic variations are reflected in educational and political realities. The demand or push for bilingual education, for example, may not be as high in a rural industrial town in the Mohawk Valley as in the multicultural hub of New York City. Issues relevant to policy, however, can occur in rural, suburban, or urban contexts. The researcher found special interest in New York State due to changes happening to ELL services in her home school district and those in her local area of Western New York.

Establishing a Research Procedure

Through a professor, the researcher obtained the current version of CR Part 154, enacted in 2014, as well as the previous version, which took effect in 2007. A brief, informal comparison was conducted to build an idea of the extent of changes between the two documents. A more in-depth search was then conducted to gain knowledge of historical events in ELL policy specific to New York State, using databases and organizational websites. CUNY-NYSIEB's website provided particularly valuable information on current topics in education of ELLs, including the history of CR Part 154.

With deeper awareness of the context for ELL policies and the issues legislators and education officials are currently addressing and have addressed in the past, a methodological process began to take shape. The decisions made in the planning process have been influenced by methods of policy analysis using *intertextuality* (Johnson, 2015) and *historical-structural research* (Tollefson, 2015). Tollefson (2015) notes the power of historical-structural approaches to transform traditional research. He notes:

Research questions within historical-structural research often reverse traditional notions of cause and effect... For example, whereas most research in second language acquisition views students' motivation, teachers' training, or language ability, and curriculum and materials as causal variables that explain language learning, historical-structural research assumes that these are dependent variables which have been shaped by historical and structural factors. (pp. 142-143)

Johnson notes these methods can be combined to interpret the changes made to policies over time as revealed by text and context within, between, and outside of legislative texts (Johnson, 2015).

In order to develop a picture of changes to policy across time, older iterations of CR Part 154 were needed. The researcher consulted with professors in SUNY Fredonia's education department to discuss possible resources and determine additional documents and research avenues that may be applicable and augmentative to the two recent versions of Part 154.

An initial online search using databases (through SUNY Fredonia's Reed Library website) and search engines provided few resources on older versions of Part 154, either in the form of the documents themselves or information about the contents. As content and textual analysis is dependent on obtaining actual copies of documents, the researcher contacted

education officials involved in policy consultation in local districts to inquire about possible avenues for locating policy texts not otherwise publicly available.

Performing Analyses

After an initial informal read-through of the policy documents, the researcher determined that there were enough changes between Part 154-1 and Parts 154-2/154-3 to conduct an analysis of these two most recent versions of the policy. She therefore decided not to pursue older versions. After this decision was made, a content analysis was performed on the documents. Wenbin (2012) notes that by using content analysis, a policy researcher can see “the most salient problems that face the process of educational reform and development... [and] the government’s basic decisions and actions” (p. 85).

After a first reading of the Part 154 documents, the researcher performed an initial inventory of salient themes from each version and differences (changes) in the text. A policy orientation chart (Wiley, 2002, adapted from Kloss, 1977) (Table 1) was used as an instrument to situate findings within a manageable scale. In this chart, Wiley (2002) identifies six orientations (*promotion, expediency, tolerance, restrictive, null, and repression*) under which language-related policies can be classified. New York’s education system has taken a historically pro-bilingual stance. In identifying orientations of policy decisions, the researcher decided to omit *repression*, defined by Wiley (2002) as “active efforts to eradicate minority languages” and null policies, which Wiley uses to identify the absence of recognition of language varieties. This decision was made as the policy documents themselves are written broadly enough to neither include nor exclude particular language varieties. The researcher used this framework in an effort to identify whether changes to Part 154 made any aspects of the policy more or less applicable to these orientations.

Table 1

Policy Orientations and Characteristics

Policy Orientation	Policy Characteristics
<i>Promotion-oriented</i>	Resources are allocated to support the official use of minority languages (eg. Policies that mandate bilingual programs)
<i>Expediency-oriented</i>	Allow use of minority languages for limited / short-term purposes
<i>Tolerance-oriented</i>	Absence of state intervention in rights and services for minority language communities
<i>Restrictive-oriented</i>	Legal prohibitions on the use of minority languages (eg. Arizona's English-only laws)
Wiley (2002), drawn from a language rights framework by Kloss (1977)	

An integral aspect of intertextual analysis is the task of making connections between texts throughout the research process. Johnson states, “data collection and analysis are ongoing, intertwined, and recursive, with emerging findings inspiring new sites and methods of data collection” (p. 173). As new themes arise in thorough readings of the texts, a researcher following these methods can become aware of new research paths to pursue and how texts connect to each other. As these connections emerge, seemingly unrelated texts and discourses may in fact be found to have common contextual undercurrents.

In order to ensure a fully informed reading of the policy documents as well as gather data to understand the context for, and response to, policy decisions and implementation, the researcher next searched for publicly available legislative documents, minutes from meetings, and additional information about the creation of ELL legislation in New York. On the recommendation of an Education professor, the researcher sought out the New York State Board of Regents website, which holds an archive of monthly meeting summaries, agendas, and

presentations. These resources proved valuable in providing more detailed background on the decisions made regarding Part 154 and other issues regarding ELLs in New York State, as well as giving some insight into discussions that have occurred and when they happened. The ability to develop a timeline for ELL policy decisions added depth to the researcher's contextual understanding of the revision and implementation of Part 154.

Moreover, newspaper archives from across the state were investigated to discover public and media discourse and reports from school and political representatives that may be present in media reports. A statewide search was performed in order to gain a sample representative of the varying responses in districts in the diverse areas of the state. Informative reports regarding ELL-related topics in the state legislature, articles about the ELL populations and services in individual districts, and opinion editorials and letters were collected to represent multiple perspectives, reactions, and issues in ELL policy and education.

All documents were re-read to ensure a thorough comprehension and to avoid overlooking key themes or pertinent words. A minimum of three readings of all documents were performed. As themes were identified they were recorded in a spreadsheet for reference and to make clear connections. Separate sections were set for each type of document (ie. policy, news article, legislative meeting/debate/press release). Themes and documents were matched, and specific quotes from documents that aligned with themes were recorded. Any outlying discourse or decision that did not match with themes was also noted. Outliers were noted because, despite not necessarily having major influence on widespread discourse of official mandates, they could provide insight into local context or debates that may have an effect on decisions.

After re-readings were finished and findings were classified, major changes in Part 154 were compared with these themes to glean an understanding of possible motivators and catalysts

for revisions and additions to the law. The researcher then referred back to all documents and media reports to attempt to determine the direction in which these changes have moved Part 154, particularly with regard to the newest (current) version in use.

Validity

One important aspect of policy texts, and a consideration that makes them analyzable as a result, is the fact that they are open to, and often subject to, multiple interpretations. When performing policy analysis involving texts, Johnson (2015) notes, “the analyst needs to carefully consider their own positionality with regard to how the texts are being interpreted” (p. 172). The decision to perform a qualitative rather than quantitative analysis may further open the project to researcher bias and personal interpretations, as findings may be filtered through the researchers’ previous knowledge and experiences. As the researcher performed the study alone, without the aid of a research team to confirm or contradict findings, steps were taken to ensure optimal objectivity.

One step was to obtain a wide variety of texts to offer multiple perspectives and multiple *types* of perspectives at both the macro- and micro-levels of policy. Tollefson (2015) notes that this enables *triangulation* of data “to ensure greater validity and reliability” (p. 148). Policy documents provide the most straightforward and basic guidelines for the ideal policy implementation. Legislative records give background for the decisions behind these guidelines and may hint at context for why decisions were made. Since the researcher is not using human subjects in the study, news articles may provide local context and may give voice to policy actors’ perspectives. The use of newspaper articles, however, raises a validity concern due to the uncertain accuracy of such media, particularly at small, local papers. Care was taken to confirm findings in such media with multiple sources when possible and to check for any corrections that

may occur in follow-up issues. To avoid the risk of inaccurate information regarding policies, facts about the regulations were drawn from the policy documents rather than news media.

Chapter 4: Results

The researcher read Part 154-1, Part 154-2, and Part 154-3 one time without making notes, followed by a reading during which notes were made line-by-line. The most obvious change between Part 154-1 and 154-2/154-3 is the considerable lengthening of the document itself. It is clear from looking at the documents that numerous changes have been made to add 25 pages of text, plus an entirely new document (Part 154-3). As such, the researcher found that nearly every alteration in the most recent iteration of Part 154 is an addition of some sort, rather than a change in terminology or wording.

After reading through the documents, noted changes were entered into tables separated for each section of the policy. The researcher then identified the five most major changes made between Parts 154-1 and 154-2, as well as minor changes that nonetheless reflect significant alterations in the documents' text and/or the policy. Judgments on the significance of changes are inherently subjective and must be addressed with some form of criteria to reference. Therefore, the researcher selected the changes that added the most text to the newest version of Part 154, as in the case of the addition of subpopulations of ELLs; or those that are likely to have the greatest impact on the operations of districts, schools, or teachers, such as the new requirements for bilingual education programming. This criteria still holds the risk of arbitrary decisions, but there are enough changes between the documents to make the selections stand out.

Minor changes

The researcher identified several aspects of Part 154-2 that have been added or updated since Part 154-1. These include the inclusion of charter schools in regulations, changes in terminology, and a notable shift toward emphasizing content area learning.

Charter schools. A common current topic of debate in education regards the existence

and funding of charter schools, publicly funded schools that are run by a board, which may include parents, administrators, or private sector leaders. Proponents of the growth of charter schools raise the concept of school choice as a positive effect of charters as parents apply to enroll their children, typically entering into a lottery system. While any judgment on the merits of charter schools is beyond the scope of this paper, the increase in visibility and availability of such schools is undeniable. In Erie County, a large county in Western New York that is home to the city of Buffalo, five new charter schools have opened since 2006, the year in which Part 154-1 took effect (NYSED, 2017). In Nassau County, a county that includes parts of New York City and a large portion of the state's English language learners, over 20 new charters have opened in the years since the passage of Part 154-1.

Terminology. There have been three notable shifts in terminology in Part 154-2: *Students with limited English proficiency (LEP)* has become *English language learners (ELL)*, *Native Language Arts (NLA)* is now referred to as *Home Language Arts (HLA)*, and *English as a second language (ESL)* is now *English as a new language (ENL)*. The first change is significant as it represents a shift away from a label that could be considered deficit-oriented to the more neutral *English language learner*. The switch to the use of ELL in the policy text may encourage educational entities to adopt the label instead of using LEP, a change that can already be seen in effect on many district websites. The change to *Home Language Arts* reflects an overall shift to usage of *home language* to refer to the language of the home from which an English language learner comes. This may be seen as acknowledging that ELLs are not moving on from the home language but rather still speaking and learning it in many aspects of their lives. This also aligns with an overall higher focus on ELLs' parents and families in Part 154-2 as well as the third noted terminology change, the switch from ESL to ENL. Many English language learners may

be learning English as a second language, but some already speak more than one language and are learning it in addition to the other languages they know. This is also acknowledged in the phrase *English as an Additional Language*, which is used in some situations, though not in Part 154. The shift to using *ENL* to describe the language program and classes may be the change that takes the longest time, as *ESL* has been a longstanding term, widely known and used even by people not involved in education. Even the text of Part 154-2 contains erroneous uses of *English as a Second Language*, such as on page 5, lines 105-106, which states, “Personnel qualified to teach Stand-alone English as a New Language at the elementary level shall mean a *English as a Second Language* teacher” (Italics added by researcher).

In addition to the change in the name of the ENL program itself, push-in and pull-out ESL have been renamed stand-alone and integrated. These changes are not as visible in the text of the policy itself but, just as with the switch from ESL to ENL, are consequential to the ways in which school district personnel talk about English language education.

Names for the levels of English language acquisition have also been changed. These will be discussed in more detail in a later subsection as they interconnect with other major changes within Part 154.

Content area instruction. The guidelines for Bilingual Education and English as a New Language programs in Part 154-2 contain the most notable evidence of New York policymakers’ increased focus on the integration of language instruction and core content education. These updated guidelines include specific requirements for the number of content areas taught bilingually (line 29) and multiple mentions of what is considered a content area (eg. lines 26-27). Within this aspect of the policy, it is also important to note that Language Arts instruction is separated from content area instruction in both versions of Part 154 analyzed for this paper, but

in Part 154-2 the components of BE and ENL are further delineated as English as a New Language is now removed from the Language Arts umbrella (as in Part 154-1) and identified as its own component of an instructional program. This may provide further clarity that schools must provide ELLs with both ELA and ENL instruction, rather than one or the other.

Major Changes

After two thorough readings of the policy documents and cross checks with data gleaned from state newspapers and district and government websites, five prominent changes stand out. These changes are the addition of ELL subpopulations, updated policies for professional development and training of teachers, new Bilingual Education requirements, more focus on the family involvement (as well as the rights of majority-age ELLs), and the separation of regulations concerning special education and ELL identification into a new document (Part 154-3) with extended and updated guidelines. These changes may be found interspersed throughout the document and are likely to have consequential effects on the daily experiences of students, teachers, and administrators.

English Language Learner subpopulations. Part 154-1 does not delineate English language learners by subpopulation, instead accounting only for the group at large. Part 154-2 on the other hand provides definitions and guidelines for the servicing of several subpopulations of ELLs. These are Newcomer ELLs, who are students who have been classified as ELLs for zero to three years; Developing ELLs, who have received English language instruction for four to six years; Long-term English Language Learners (LTELs), or students who have been classified as ELLs for seven or more years; Former ELLs, who have been exited from an ENL program after reaching proficiency according to assessment criteria; English learners with disabilities, who are identified as being eligible for both Special Education and English language

services; and Students with Inconsistent/Interrupted Formal Education (SIFE students), who have attended schools in the US for less than twelve months and are two or more years below grade level in literacy and/or math in the home language. Aside from the categories that rely on the number of years a student has been classified as an ELL, these subpopulations are not all mutually exclusive, and some learners may be classified in more than one category. Students may also move in and out of each subpopulation; for example, SIFE students are exited out of such status once they have reached Intermediate level on the annual English language proficiency exam, according to the guidelines in Part 154-2.

The addition of ELL subpopulations is different from other changes to Part 154 because nearly all of the updates have created new text in the document. These are not changes in which the wording of the policy or the requirements have been changed, but rather an addition of categories, which may create more clarity on services for ELLs as well as their separate needs. These subpopulations existed, named and unnamed, prior to the passage of Part 154-1, but they were not included as separate subgroups until Part 154-2. Thus, although this addition has added several pages to the document, it has had very little impact on the policy itself. This is one significant change that may have been added more for clarity and specificity than to lead to adjustment in educational practices.

The inclusion of the SIFE designation in Part 154-2 may be especially noteworthy, as it follows a nationwide trend of focusing more resources and research on this growing population of students. According to DeCapua, Smathers, and Tang (2007), approximately 13.4% of ELLs in the New York City school district during the 2005-06 school year were designated as SIFE. While New York City holds the highest share of ELLs in the state, students with SIFE status are present throughout New York. The New York State Education Department (NYSED) has a

section of its website with multiple resources and sources of information for teaching this population, though a search through databases indicates that research on the population is still lacking, with a keyword search using *Students with Interrupted Formal Education OR SIFE* on the ERIC database returning only 25 hits between 1971 and 2017.

Table 2

English Language Learner Subpopulations

Part 154-2	Page	Part 154-1	Page
(38) “Developing English language learners” defined	2	Not defined	N/A
(53-56) Delineation of ELL subpopulations	3	Only ELLs as whole population are defined	N/A
(79-84) “Long-term English language learners” defined	4	Not defined	N/A
(85-90) “Newcomer English language learners” defined	4	Not defined	N/A
(112-113) “Proficient student” defined	6	Not defined	N/A
(147-153) SIFE is defined	7	Not defined	N/A
(197-203) Requirements for identification as SIFE	10	SIFE not included in text	N/A
(538-543) Services for former ELLs (9-12) are defined, required for two years	25	(199-203) Services are not defined, required for one year	10
(587-595) Same as above for former ELLs (K-8)	27	(????) Same as above for former ELLs (K-8)	10
(693-702) Requirements for exiting students from SIFE status	31-32	SIFE not included in text	N/A
(747-750) ELL subpopulations are included in requirement to screen, place, and identify ELLs	34	(116-118) Requirement for screening, placement, identification does not name subpopulations	7
(775-776) Requires report on districts’ procedures for exiting SIFE students	35	SIFE not included	N/A
(777) Requires report on plan for services for former ELLs	35	(199-201) No requirement to report on services provided	7

Professional development and certification. The greater attention to content integration in Part 154-2 is evident in the updated regulations for in-service training, or professional development (PD). This is another area in which many of the changes that have occurred are new to the text of the policy. As can be seen in Table 3, Part 154-1 contained few explicit guidelines for PD or teacher certification, although such guidelines did exist prior to the passage of Part 154-2. The new minimum guidelines for PD give clear instructions while allowing for exemptions for school districts in which ELLs make up less than 5% of the total student enrollment. Integration of content and language acquisition is highlighted in the mandate that all teachers must receive a minimum amount of PD in language acquisition as well as the requirement that PD for ENL and BE teachers must address co-teaching and the teaching of language through content. This aligns with the previously mentioned alterations in other sections of Part 154-2, in which content area requirements for ENL and BE programs are specified and reiterated.

Overall, the guidelines for PD and certification in Part 154-2 provide expanded detail and greater specificity than what is found in Part 154-1. The earlier document contains few lines on either issue, instead directing the reader to look to Part 80 for information on certification and devoting fewer than ten lines of text to in-service training. Writers of Part 154-2 have opted to use definitive language, such as “all teachers and administrators” (line 641, p. 29), which could be seen as stressing the importance of PD related to ELLs while also reducing the likelihood of multiple interpretations of the text. Although Part 154-1 sets forth a requirement for PD, the language of the guidelines is not as strict, as districts are advised to provide PD to “all personnel providing instruction or other services to [ELLs]” (lines 205-206, p. 10). This can be read as excluding teachers who work in districts with ELLs but do not teach ELLs; however, Part 154-2

clearly includes all instructors and administrators, regardless of whether they currently teach ELLs.

There are several topics addressed in Part 154-1 for which the reader is directed to another document. For example, those looking for directions on the initial placement process for ELLs are referred to Part 117 (Lines 117-118, p. 6). In Part 154-2, however, the placement process is laid out in details in the policy itself. The explication of the requirements for certification of ELL teachers is a similar case. In part 154-1, the reader is directed to Part 80 to learn the specific requirements for certification, whereas Part 154-2 provides extended details. While these changes have negligible effects on state policy, they do make the document itself more comprehensive and reduce the need to search between documents, which could lead to more confusion over policies.

Table 3

Professional Development

Part 154-2	Page	Part 154-1	Page
(97-111) Extended details on requirements for certification of ENL teachers	5	(159-160) States teachers must be “appropriately certified pursuant to Part 80 of this Title.”	8
(641-643) PD for “all teachers and administrators that specifically addresses the needs of ELLs.”	29	(204-208) PD to enhance appreciation for native language/culture, increase skills to work with ELLs	10
(644-646) Minimum time requirements for PD (15%)	29	No specified requirements for share of PD devoted to ELL education	N/A
(644-647) Focus on co-teaching, content in PD	29	No stated guidelines on co-teaching, content in PD	N/A
(648-650) Minimum time requirements for PD for ENL/BE instructors (50%)	29-30	No specified requirements	N/A
(654-656) Requires PD alignment with content areas	30	No specified requirements	N/A
(657-674) Allowance for exemption from minimum PD requirements	30-31	No stated guidelines for exemptions	N/A
(725-727) Requirement for assurance that districts meet minimum PD rules	33	No assurance on PD is required	N/A

Bilingual education. Perhaps the most substantial changes to Part 154 and the activities of school districts are the new rules for bilingual education. Some of these are changes to text alone, while others are updates to the policy that have led to new bilingual programs or newly required programs in many school districts, even if ELL enrollment hasn't changed.

Prior to the passage of Part 154-2, school districts were mandated to offer bilingual education programs if twenty or more ELLs with the same home language at the same grade level were enrolled in the same building. Under the newest version of the policy, districts are now required to offer a bilingual education program if ELL enrollment in the entire district includes twenty or more students with the same language at the same grade level. Therefore, districts that have had this enrollment in the past spread across multiple buildings must now offer bilingual education, even if the enrollment has not changed. This has left districts working to create bilingual programs, which may not be an easy task. These programs require specialized staff and materials, and, as noted in Part 154, bilingual teachers must have special certification. Recruitment efforts must therefore be put in place to hire appropriately certified teachers who can teach academic content in both English and the partner language.

The policymakers address the challenges this new mandate could pose to some school districts, as there is also an allowance for limited exemptions from the requirement to implement BE. This allowance comes with instructions for applying for an exemption, regulations for qualification for an exemption, and rules for continuing qualification once an exemption has been granted. In order to ensure that districts put in an effort to implement the required BE program, Part 154-2 asserts that requirements must be met to recruit certified teachers and offer transfer options to students within the district who qualify for BE. Part 154-1 does not address

possible exemption from a BE requirement, so this has been a substantial change to the policy and the document itself.

The new regulations regarding bilingual education will have an impact on districts, district personnel, and students. In addition to the changes in enrollment requirements and exemption allowances, Part 154-2 has also added notes that transportation must be offered to students transferring to another school to attend a bilingual program, as well as regulations regarding placement of bilingual programs within focus or priority schools. These are schools that are identified as low performing, often with low test scores and graduation rates (NYSED, n.d.). Focus and priority schools are subject to requirements and efforts to turn around low performance by creating specific plans to improve. The reasoning for limiting BE programs in such schools is not stated within Part 154-2, so it is difficult to identify whether the requirement is in place to benefit students who may attend focus or priority schools, personnel at such schools, or districts which must be working to turn around these low performing schools. Although the reason is unclear, the emphasis on avoiding placement of BE students in focus or priority schools is another substantial amendment to the Part.

Parts of the new regulations for BE in Part 154-2 also cross over with the extra focus on core content instruction as well as a new way of defining Language Arts classes. Although the rules for inclusion of core content instruction in BE programs has not changed since the passage of Part 154-1, the specificity and emphasis of the text regarding content instruction in Part 154-2 indicates an increasing priority placed upon this aspect of ELL education. The names of content classes (eg. Social Studies) are repeated more than once in requirements for BE instruction. The newest version of the Part also clarifies the required number of content courses in BE, whereas Part 154-1 does not state specific quantitative requirements. This is another area in which any

rule or expectation that may have been left open to interpretation in Part 154-1 has been clarified and reiterated with detail in Part 154-2.

The newest version of Part 154 also increases accountability of districts in reporting numbers of ELLs and ensuring they have the staff necessary for programs. Reports on expected ELL enrollment must be based on the previous three years, an increase from the former requirement of one year. Regulations are more quantitative than in the previous iteration of the policy, with a minimum percentage of ELLs who must be served by bilingual programs. Additionally, Part 154-2 assures that the Commissioner will oversee reports of potential enrollment to ensure they are properly estimated.

Table 4

Bilingual Education

Part 154-2	Page	Part 154-1	Page
(23-24) BE noted to be “research-based;” 3 components	2	(75-76) BE has 2 required components	4
(314-324) Report on expected ELL enrollment based on previous 3 years	15	(166-173) Report is based on previous 1 year	9
(325-328) 20+ ELLs with same HL and grade level across district requires BE	15	(182-185) 20+ ELLs with same HL and grade level in same building requires BE	9
(329-332) Requires programs for at least 70% of ELLs who share same grade and HL in a district	15-16	No stated minimum requirements	N/A
(334-347) Focus schools and BE are addressed – programs should not be placed in focus schools, option of transfer in NYC	16	Focus schools are not addressed	N/A
(350-354) 20+ ELLs with same HL and grade in same building requires BE	16-17	(182-185) 20+ ELLs with same HL and grade in same building requires BE	9
(359-360) Transportation requirement for BE transfers	17	No stated requirements for transportation	N/A
(361-365) Allowance for one-year exemption from BE requirement for HL less than 5% of statewide ELL population (up to 5 years)	17	No stated allowances for exemption based on enrollment	N/A

(367-390) Requirements to qualify for exemption from BE program mandate	17-18	No stated allowances for exemption based on enrollment	N/A
(390-396) More information on exemption from BE mandate	18	No stated allowances for exemption based on enrollment	N/A
(399-406) Rules regarding potential pattern in underestimation of ELL enrollment	19	No regulations concerning underestimation or overestimation of enrollment of ELLs in districts	N/A
(407-412) Ensures program continuity for ELLs	19	Program continuity is not addressed	N/A
(441-446) More rules regarding right to transfer to non-focus school BE program	20	Focus schools are not addressed	N/A
(448-453) Rules for parental contact/information for schools with BE exemption	21	No information on parental contact and BE exemptions	N/A
(598-600) BE programs (K-12) must include 2 units of study in language arts: 1 in ELA and one in HLA	27	(75-76) Does not specify required units of study for language arts component	9
(605-607) In BE, provision of content area subjects depends on the BE model and “student’s level of EL development.”	28	Not detailed in policy	N/A
(607-614) Clarification of required number of bilingual content classes in BE	28	No specific stated requirements for bilingual content	N/A
(714-716) Required assurances related to BE/exemption	32	No requirements for assurances re: BE	N/A

Family involvement. One major change that may be somewhat unexpected in a policy document is the addition of multiple rules and recommendations regarding communication with families of ELLs, specifically parents or parental relations. As can be seen in Table 5, there have been many additions and alterations to the text of the policy in regards to parents. In several instances, recommendations in Part 154-1 for communication with families have been expanded to suggest families be given more in-depth, substantial information regarding programs, procedures, and rights of students and families. Another aspect of these alterations is the addition of lines on the rights of ELL students who are 18 years or older. While they are not included in Part 154-1, Part 154-2 asserts majority-age ELLs have the right to request a review of placement and take an active part in the placement and review process.

Overall, ELLs and their families are placed in a more active, central position to the identification, review, and placement processes in the newest version of the Part. While Part 154-1 suggested parents be given information on general requirements of services and programs for ELLs, Part 154-2 suggests parents be privy to specific goals and requirements of programs as well as who is involved and the certification requirements for those personnel. Part 154-1 encouraged regular involvement with the families of ELLs, but Part 154-2 adds requirements and recommendations that ensure parents will be deeply involved throughout the school year, starting prior to the student's enrollment in the language program. Whereas the regulations of the prior version of Part 154 included parents as peripheral to the educational and administrative process regarding ELLs, these updated guidelines and requirements, as well as the more detailed language used within the document, indicate that families may increasingly be given greater agency within the

school system to assist in the education of their children.

There are several regulations in Part 154-2 which now have time limits that were not noted in Part 154-1. Many of these deadlines are presented in connection with issues related to family communication. This includes requirements that the school district provide notice of identification and the right to seek review within five school days, a ten day allowance for the return of a signed parental notification form regarding program placement, and the mandate that parent orientation be held prior to the ELL's enrollment in a language program. These time limits may ensure smooth placement as districts and families will know exactly when all documents and actions must be completed, thereby minimizing delays in the placement process. Such time limits may also provide guidelines as to how much time a review process should take, which may therefore reduce extraneous actions during such a process while ensuring that all appropriate parties are involved through each step.

Table 5

Family Involvement

Part 154-2	Page	Part 154-1	Page
(192-196) Parental notification requirements, including right to seek review, due date	9	(Starting at 208) Parental notification requirements, no due date, no mention of right to seek review	10
(230-233) Parties who can request review of identification (Parent, teacher, ELL [18+])	15	(219-220) Only parent/parental relation given power to request change in placement	10
(234) Guidelines for the identification review process include consulting with parent/parental relation	11	No guidelines for review process are included (Parent meetings <i>are</i> recommended within Part 154-1)	N/A
(255-256) Parental notification requirements (review process)	12	Suggestions for consultations with parents does not include this recommendation	N/A
(262-265) Parental and student rights in re-designation of ELL student	13	Regulations for review process not included, majority-age ELLs not mentioned	N/A
(271-274) Re-designation notification requirements to parental relation/student (18+)	13	Regulations for review process not included, majority-age ELLs not mentioned	N/A
(287-288) Parties who must be informed of official designation decision (parents/ELL [18+])	14	Regulations for review process not included, majority-age ELLs not mentioned	N/A
(300-302) Family's preferred mode of communication must be kept in records	14	No guidelines for retention of mode of communication information in records	N/A

(341-347) Parent right to transfer student to BE from focus school in NYC	16	Focus/priority schools are not addressed (*Parents are given right to transfer student from school without BE to school with BE)	N/A
(359-360) Notification of availability of transportation in case of transfer from focus school	17	Focus/priority schools are not addressed	N/A
(416) Parents shall be provided “high quality” orientation session	19	(236) “High quality” not used to describe orientation session	12
(418-419) Updated requirements for orientation session (include “goals and requirements”)	19	(237) Orientation session must include “general program requirements”	12
(420) Parent orientation must occur “ prior to a student’s enrollment in a program...”	19	(239) Parent orientation must occur “within the first semester of... child’s enrollment in the school...”	12
(420-422) ELL can’t be withheld from “timely program placement” if parental relation doesn’t attend orientation	19-20	No regulations regarding parental attendance of orientation	N/A
(422-423) Orientation provided in language or mode of communication parental relation “best understands.”	20	(240) Orientation provided in “first language” of parent/parental relation	12
(432-433) Parental notification must explain “goals and purpose” of language programs for ELLs in district	20	(222-224) No requirement for notification to explain goals and purposes, but parent meeting with principal and BE supervisor must include goals and purpose	11
(434-437) Parental notification must explain that students receive “all required core content,” access to extracurriculars	20	No requirement for notification to include info on access to content courses/extracurricular activities	N/A
(441-445) Must inform parent/relation of right to transfer to BE in school that is not “School Under Registration Review” or Focus/Priority School (in NYC)	20	Focus schools not addressed	N/A

(445-446) Notification of right to transfer student to school must indicate transportation is provided	21	Provision of transportation not mentioned	N/A
(448-453) Parental notification requirements for schools with BE exemption	21	No stated requirements/information on exemption from BE	N/A
(454-458) Time limit for parent to agree or disagree with placement decision	21	(218-220) Parents given option to withdraw ELL from BE, no time limit given	11
(459-467) Parental relation retains right to make final placement decision	21	Retention of rights to make final placement decision not mentioned	N/A
(468-476) Parental relation retains right to request placement in BE (after requesting ENL placement)	22	No stated requirement to notify parents to inform of right to make final decision	N/A
(477-479) Updated language: School districts must meet with parents at least twice annually	22	(214-217) Districts must make an effort to meet with parents at least once annually	11
(480-482) Updates on requirements of parent meetings (more information given to parents)	22	(216-217) Meetings with parents should “help them understand the goals of the program and how they might help their children.”	11
(483-488) Requirements for who should be present at parent meetings	22	No stated requirements for personnel at parent meetings	N/A
(491-498) Instructions for maintaining records related to parental communication, notifications, agreements, or meetings	23	No stated requirements for maintaining records related to parental communication, notifications, agreements, or meetings	N/A
(717-719) Requirement of assurance that parents/parental relation of ELLs receive orientation and notifications	33	(235-238) Requires parental orientation and notifications, but does not require assurance that these occur	11-12

English Language Learners with disabilities. The final major change in Part 154 involves not only alterations and additions to Part 154-1, but also the creation of a separate section (Part 154-3). All of these changes address the placement, testing, and services for ELLs with disabilities, or those who may have disabilities. Table 6 shows changes that have occurred between Part 154-1 and Part 154-2. The issues covered in Part 154-3 are largely new to the policy and regard determination of whether a student with a disability will take the ELP assessment as well as language service exit criteria for ELLs with disabilities. There is very little overlap between the regulations of Part 154-1 and the new guidelines in Part 154-3, as testing for ELLs with disabilities is only mentioned in a paragraph-long section on page 12 (lines 242-251) in Part 154-1. Both Parts 154-2 and 154-3 provide more detailed guidance on appropriate participants on committees related to ELLs with disabilities and/or Special Education. Subpart 154-3 has a section devoted to the formation of a Language Proficiency Team (LPT) to assist in determining whether a student with a disability may also have a second language acquisition need, a topic not covered in Part 154-1. This document also includes a detailed, step-by-step process that the LPT follows to make a determination.

The formation of a LPT may reduce the possibility of students with disabilities being erroneously classified as needing EL services as it involves a thorough and appropriate review of student work. One issue still not deeply addressed in either Part 154-2 or 154-3 is the possibility of over- or under-identification of those students who are already ELLs and are suspected of having disabilities. However, there are more specific guidelines and allowances in the most recent version of the policy, including an extension of the due date for the identification review process from ten to twenty days if consultation with a Committee on Special Education (CSE) is required during review, as well as a recommendation that such committee be consulted if a

disability is known or suspected. Therefore, it appears that policymakers involved in the writing of Part 154-2 are taking into account variables that may be related to disabilities that may affect ELLs' performance in school and on ELP assessments and are therefore making preemptive plans to address these variables in ways which expand upon those noted in Part 154-1. In one such instance, whereas regulations in Part 154-1 direct educators and administrators to provide special education services to students whose score on the annual ELP is the result of a disability, Part 154-3 directs districts to create the LPT to determine whether these students will be assessed by the ELP assessment at all. Likewise, the new document provides the exit criteria if such students are tested and classified as ELLs, an issue not addressed in Part 154-1.

Table 6

English Language Learners with Disabilities

Part 154-2	Page	Part 154-1	Page
(54-55) ELLs with disabilities are included as ELL subpopulation	3	Subpopulations are not separated	N/A
(180-183) Step 3 of identification process - identifying students who have a disability: Reader is directed to Subpart 154-3	9	(143-147) Instructs district to refer ELLs suspected of having a disability to committee on special education, assure bilingual multidisciplinary assessment	7
(217-220) Committee on Special Education must include appropriate bilingual/ENL certified person	10-11	(145-146) Requires bilingual multidisciplinary assessment, does not state personnel requirement	7
(221-222) Placement in services for ELLs cannot be refused “solely because the student has a disability.”	11	(247-248) Students with an IEP who may be ELLs are “eligible” for ELL services when recommended by an IEP	12
(223-224) Procedures for identifying a disability must “differentiate between language proficiency and disability... in accordance with sections 200.4(b) and (c).”	11	(145) Mentions need to hold a referral process “in accordance with Part 200.”	7
(247) During review process, consultation with CSE is recommended for ELL with disability to ID learning disabilities that may impact language assessment results	11	No guidelines for review process included	N/A
(251-253) Extension of deadline (in review determination) to 20 school days if consultation with CSE is required	11	No guidelines/time limits for review process included	N/A
(763-765) Requires submission of plans to ID services for ELLs with disabilities “aligned with any intervention plans” already provided to all students	35	No mention of alignment with district-wide intervention plans	N/A
(771-773) Districts must show policies for ELLs with disabilities are “consistent with 154-3.”	35	154-3 is new addition to Part 154	N/A

Public Discussions on English Language Learners

Links to Part 154. Although topics surrounding refugees and immigration are prevalent in the media, most discussions on ELLs and their education is kept to academic journals and press releases from educational organizations that are involved directly in ELL issues. Many of the reports that do appear in state media are from years since the enactment of the newest version of Part 154, which may have some indication of the effect of the Part on the overall educational environment. Very little is written in the media about Part 154 itself, which is perhaps not surprising for an educational policy document. Most of the discussion on ELLs is related to the growth of the population in state schools and the potential for improving achievement and graduation rates (Lankes, 2014; Bump, 2014; Bump, 2018; Rey, 2018). Despite little mention of Part 154, the issues brought up by educators and advocates in the media are either addressed by Part 154-2 (such as family involvement and availability of bilingual education) or result from changes brought about by the new version of the Part (specifically the new bilingual education rules [see Bump, 2018]). A common concern regarding the new regulations regarding BE is the cost of funding the changes, a concern that is not addressed in Part 154-2 itself. Thus, districts may be more responsible for finding a solution to funding issues, which has resulted in applications for grants and innovations such as newcomer schools (Bump, 2018).

Chapter 5: Discussion

English Language Learner issues in the news

Outside of policy documents and research literature, media reports and public discourse about ELLs and ELL services are relatively plentiful but narrow in focus. The majority of news reports focus on the high rate of growth of the English language learners population across the state and the country, sometimes making note of the new destinations within the state into which new ELLs and their families are moving. Despite the fact that rural areas are seeing a growth in their ELL populations, media in moderate to large cities in the state are the main sources of public discussions and reports on ELLs. The major topics in the media discourse are the growth of New York State's ELL population and the achievement gap between ELLs and their native English-speaking peers. The latter is often written about in terms of graduation rates of ELLs (eg. Rey, 2018) or struggles ELLs face in terms of adjusting to a new language and culture in New York schools (Rey, 2018; Bump, 2018).

Often, the two issues are addressed in the same article, suggesting an assumption that schools that are struggling to serve ELLs will face even more difficulties unless changes are made to current services. Rey (2018) interviews several community leaders in the Buffalo area, finding that ELL advocates believe that schools across New York State must increase attention paid to ELLs and outreach to their families, as well as the programming and funding provided to such learners and the training offered to teachers. Many of these concerns are addressed in Part 154-2, which mandates the expansion of bilingual education and professional development related to ELLs. Additionally, it incorporates more guidance on how to include families directly in the placement and education decisions regarding ELLs. Therefore, policymakers have

attempted to provide solutions for the issues that ELL advocates see as the biggest struggles facing this population of learners; however, whether due to the newness of the Part or other barriers to implementation of regulations, the intended outcomes may not have been fully seen by this point, as many of the articles concerning the struggles of ELLs have been written since the passage of the newest version of Part 154.

Decisions by local education administrations indicate that leaders across the state are following or adding to the mandates of Part 154 by creating Newcomer schools which specifically target instruction to ELLs new to US schools (Rey, 2018; Bump, 2018) and by seeking out qualified bilingual teachers in new places, such as Puerto Rico (Buckley, 2017). The effort to recruit teachers from Puerto Rico provides a solution to the shortage of bilingual teachers while also adding to schools teachers who can relate to some ELLs' backgrounds. Part 154-2 requires districts to seek out highly qualified personnel if they do not already have those personnel on their faculties, and the fact that schools are recruiting these teachers from in and outside of the continental United States indicates that they are putting in the effort to not only abide by the mandate but also to strengthen their services to ELLs. The regulations set out requirements to follow that, despite being more detailed than previous versions of Part 154, still allow for enough interpretation to let districts decide the level of effort they put into responding to requirements. Recruitment initiatives and innovative schools that go beyond Part 154 requirements suggest at least some districts are responding with efforts that are designed to benefit students and not just satisfy the commissioner.

Attempts to enhance outreach to ELLs' families are also topics in the news media. Lankes (2014) presents a look at cultural and community enhancement programs in diverse Buffalo public schools, aided by the Hispanic Heritage Council. Community partnerships are

not mandated by Part 154, but appreciation for the home language and culture is included as an essential aspect of ELL education in Part 154-1 and Part 154-2. Interestingly, Part 154-1 is more explicit about incorporating the students' home culture into instruction as it mentions appreciation of multiculturalism as a facet of PD for teachers of ELLs; however, Part 154-2's stronger emphasis on parental involvement in school and expansion of bilingual programs in which Home Language Arts is a core subject points to an emphasis, albeit implicit, on the need for educators to become aware of the home culture.

A common thread running through many media reports on ELL learners is achievement and, often, the achievement gap between this population and their peers. Achievement is mentioned in regards to availability of programming and bilingual programs (Rey, 2018), cultural awareness (Lankes, 2014), peers and teachers who can empathize with ELLs (Bump, 2018), and issues related to testing (Bump, 2016). While testing is barely addressed in Part 154-2, ELL achievement on standardized tests is a concern often expressed by educators interviewed and surveyed in the literature and by people advocating for ELLs in the media. The issue of testing is a contentious topic, and as New York State begins to increase availability of tests in the home language, people on both sides of the debate over home language assessments will have opinions on whether such an accommodation will raise ELL achievement. While this is a topic more aligned with New York's Every Student Succeeds Act (ESSA) plan, there remains a possibility that increased scrutiny over the testing of ELLs across the state and nation will lead to regulations included in future drafts of Part 154 just as increased attention to ELLs with disabilities inspired an expansion of mandates related to placement and provision of special education and English language services.

Parts 154-2 and 154-3 and the future of English Language Learner education

The creation of newcomer schools, expanded recruitment efforts in locations such as Puerto Rico, and efforts to incorporate community members into academic and cultural suggest that schools are devising ways of addressing the needs of the ELL populations in ways that may follow the mandates of Part 154 but are tailored to each district's needs. The new regulations in Part 154-2 have created needs that many schools may not yet have the resources to meet. However, Part 154 is just one piece of the complex job of educating ELLs, and it may be as much an indication of the direction in which ELL education is heading as it is a policy detailing the needs that must be met. The changes and additions to Part 154 in the 2014 document are timely as immigration is a hot topic, ELLs are increasingly moving to new destinations, and students are joining schools from countries that have not been highly represented by the ELL population in the past.

In several studies that address the concerns and hopes of educators in schools that serve ELLs, participants express worries that their schools are not prepared to educate ELLs because of issues such as lack of financial resources (eg. Hopkins, 2014), ineffective language programs (eg. Stephens & Johnson, 2015), and training misaligned to the needs of ELLs and their instructors (eg. Langman, 2014). New and expanded regulations on BE and ENL programs as well as in-service professional development in Part 154-2 may address the latter two issues in a way that is seemingly *promotion-oriented* (Wiley, 2002) toward ELLs. Within this framework, however, it may be worth noting that some ELL advocates (eg. Valdez et al., 2014) may situate transitional BE programs, which are offered in some New York districts, within Wiley's proposed *expediency-oriented* level as these programs may utilize home language as a step

toward English proficiency rather than as a resource disconnected from English.

Clear, detailed instructions for programs and training that were added to Part 154-2 also ensure that the directives handed down from those at the macro-policy levels are not so vague that they are left open to interpretation that could cause confusion or ineffective programming, as mentioned in the literature. The concern over financial resources, however, may persist as the progressive regulations for BE in Part 154-2 impart a financial burden on school districts that the Part addresses only by granting the possibility of deferment of program implementation.

In 2014, around the time the current version of Part 154 was taking effect, The New York State Department of Education (SED) released a framework of principles for educators, administrators, and policymakers called “The Blueprint for English Language Learners Success.” This document essentially summarizes and highlights the main points and goals of Parts 154-2 and 154-3 and can provide a succinct view of New York State’s aims for ELLs and the people who guide their education. The document also points to some indications for the changes to Part 154, especially an emphasis on “College and Career Readiness” and a growth in New York’s ELL population. The former issue is a hot topic in education today, with the concept of *college and career readiness* informing the creation of state and national education standards. To keep this goal equitable, services provided to ELLs must be given extra attention.

In a press release, education leaders indicate that providing a better understanding of bilingual education is one of the goals of the Blueprint (NYSED, 2014). It follows that this is one of the goals of Part 154-2 as well. As noted in the literature, states in which English-only instruction has been mandated are also states in which ELL achievement in content area subjects has been lower. The updated regulations for bilingual education, along with comments made about the Blueprint for ELLs Success, suggest that New York education officials are placing a

priority of expanding access to bilingual education because they see such access as raising opportunities for achievement.

The newest version of Part 154 includes new policies, mandates that have been altered from previous iterations, and additional details to previous rules for services offered to English language learners and their families. The differences between versions align with educational trends, research findings, and demographic changes. Many of the adaptations made to the Part appear to be designed to consider language as a resource, or to at least eschew a view of language as a barrier. The new BE requirements, especially, will encourage districts to draw on more students' linguistic resources, as opportunities for entry into BE programs are expanded. Additionally, Part 154's approach to BE is more ELL-focused than those in other states which have drawn concern from ELL activists and researchers (eg. Valdez et al, 2016). The BE requirements set forth in Part 154 are made to open up more BE programs specifically to ELLs, rather than their native English speaker peers, which indicates a promotion-oriented view of ELLs and their sustained bilingualism, according to Wiley's (2002) framework. Also indicative of such an orientation is the new terminology for ELLs, including the changes from *Limited English Proficient* to *English Language Learner* and *Native Language Arts* to *Home Language Arts*. It may be argued that the change from LEP to ELL, however, still tends toward an expediency-oriented view, which Wiley states allows use of other languages for short-term purposes, the purpose in this case being to learn English. This may be one reason some involved in the education field prefer the terms *Emergent Bilingual* or *Multilingual Language Learner*.

The more extensive incorporation into Part 154-2 of regulations and recommendations related to families also indicates a tendency toward a promotion-oriented, or additive, view of ELLs and their families. As noted by Johnson and Johnson (2015), home language connects to

family for many ELLs. As many schools strive to involve parents more deeply in children's schooling, regulations in Part 154-2 provide more details of what parents should be told and when. If districts follow the regulations set out by the new version of the Part, families will have a more active part in ELLs' schooling and program placement, which could increase self-esteem and student engagement with academics in and out of school. Utilizing funds of knowledge, as suggested by ELL researchers such as Gonzalez, Moll, Tenery, Rivera, Rendon, Gonzales, and Amanti (1995) requires getting to know a student's family background, which will be more possible if families feel they have an active and informed role in their children's schooling.

Perhaps one of the most notable but easily overlooked changes in Part 154-2 is the addition of ELL subgroups. These subgroups have existed since before newest version of Part 154-2 was written, but the delineation of ELL learners into subpopulations indicates that policymakers and educators are considering ways in which the needs of these learners may differ between groups. In an era of education when differentiation of instruction is a heavy focus of daily planning and professional development, understanding the individual needs of all learners and the particular aspects of their lives that may affect their learning is important. Although they may overlap, each subpopulation of ELLs also exhibits its own characteristics and needs, so creating discrete categories within the policy may help districts address the needs of these learners more appropriately. There are few news articles, or even research studies, that make note specifically of subpopulations of ELLs, so it is difficult to point to a particular point in time or definite reason for the inclusion of subpopulations. Some comments in the media, however, suggest that certain subgroups may be getting more attention from those with stakes in education beyond the policy writers. Newcomer schools, developed to address the needs of ELLs who are new to American schools and who make up at least one of the newly addressed subpopulations

of ELLs, are an example of this focus.

de Jong (2008) relates a case study of one Massachusetts district in which teachers worked within and outside of policy to create a language program that they felt would be most effective to their English learners. While the newest version of Part 154 leans toward a promotion-oriented view of ELLs and gives clear instructions on services in order to assist ELLs, their families, and their educators, reports indicate that many districts are still feeling taxed by the regulations and the need for resources that come with it. Reports also demonstrate that some districts are, like the educators in Massachusetts, working within the policy to create avenues for ELLs to receive effective content and language instruction, such as newcomer schools (Bump, 2018).

Limitations and suggestions for further research

The researcher encountered some challenges in attempts to gain access to documents that may provide more perspective into the creation of Parts 154-2 and 154-3. Public records of meetings of the Board of Regents and other educational organizations provided less insight than anticipated, which may diminish the potential view of motivations and effects reviewed in the preceding study.

Additionally, a textually analysis can only provide a limited view of a policy's impact and potential impact on schools, educators, and students. Even with considerations of discourse in the media, viewpoints from those tasked with implementing new regulations of the most recent version of Part 154 may give some insight into reasons for satisfaction or dissatisfaction with the changes, which in turn could provide clues as to the likelihood of successful implementation. Future studies that make use of interviews and/or surveys could add to the understanding of Part 154-2 and Part 154-3's overall effect on school climate, program

implementation, and academic achievement. Studies involving students, parents, and/or educators as participants would offer varied views into the impact of the policy. As focus on both content and special education increased in the most recent version of the Part, research that gathers the thoughts of educators in these areas may add to an understanding of how all teachers react to the new regulations, particularly for professional development. One interpretation of Parts 154-2 and 154-3 is that they increase the accountability of districts, schools, and educators to better serve ELLs, their families, and their teachers. As districts increasingly adopt either new BE programs or design other means of helping ELLs achieve, a deeper view into the actions of policy agents at the micro-level in particular will indicate whether Part 154 is achieving the goals the revision sets out to achieve.

Conclusion

Trends across the state and the nation indicate that the population of English language learners will likely continue to increase. The newest revisions to Part 154 suggest that New York's response to this growing population is to provide more services with greater equity for families and a stronger emphasis on the home languages and cultures of ELLs than has been prioritized in the past. If the districts in the state can successfully implement these plans in the spirit in which ELL advocates support, New York can be a leader in providing education that matches Wiley's (2002) *promotion-oriented* view toward language and language learners and Ruiz's (1988) *language-as-resource* orientation. However, as indicated in the literature, any macro-policy may be left open to districts and adjusted according to available resources, needs, and outside challenges (eg. testing requirements). The authors of the newest version of Part 154 have expanded and added details to make regulations clear and firm, but a clear picture of the overall response to the policy may take time. The very existence of a policy that covers over 40

pages where some states have minimal written regulations, however, suggests that New York is taking steps to ensure an educational climate in which English language learners will thrive.

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