

# LPAC

## Language Proficiency Assessment Committee Framework Manual



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## Foreword

19 Texas Administrative Code (TAC) Chapter 89. Adaptations for Special Populations. Subchapter BB. Commissioner's Rules Concerning the State Plan for Educating English Language Learners (ELLs) states that all school districts that are required to provide bilingual education and/or English as a second language (ESL) programs establish and operate a Language Proficiency Assessment Committee (LPAC). The LPACs are charged with reviewing all pertinent information on all identified English language learners upon their initial enrollment and at the end of each school year. Districts are required to have on file policy and procedures for the selection, appointment, and training of members of the LPACs.

The ***LPAC Framework Manual 2016-2017*** includes clarification of the legal requirements for LPACs, and provides documents and forms to facilitate the training of LPAC members. The forms included with the manual are for use by districts and are not required forms for the implementation of a Bilingual/ESL program. This manual integrates state and federal Title III of Public Law 107-110 (No Child Left Behind) requirements regarding the identification, program placement, parent notification, annual review, and assessment of English language learners as they attain language and academic proficiency.

Three major topics are covered in this manual

- LPAC Membership and Training
- LPAC Responsibilities
- Coordination with Other Programs

\*Education service centers will provide school districts and charter schools with training on the content and procedures of this manual

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## Introduction: Framework for the Language Proficiency Assessment Committee (LPAC) Process

**What:** The Language Proficiency Assessment Committee (LPAC) plays a pivotal role in the education of English Language Learners (ELLs). The LPAC's role extends beyond the responsibilities established under the Texas Administrative Code, 19 TAC Chapter 89, Subchapter BB Commissioner's Rules Concerning State Plan for Educating English Language Learners (ELLs). As an advocate for the ELL, the LPAC becomes the voice that initiates, articulates, deliberates, and determines the best instructional program for the student. It functions as a link between the home and the school in making appropriate decisions regarding placement, instructional practices, assessment, and special programs that impact the student.

**Why:** LPAC Framework Manual 2016-2017 integrates the parental notification requirements of Title III of Public Law 107-110 (No Child Left Behind Act of 2001) as they relate to the LPAC process.

**Who:** Each member of the LPAC understands:

- training is necessary to carry out his/her responsibilities;
- the instructional and support programs available to the student;
- the timelines of meetings and documentation;
- the decision-making process that needs to be followed at meetings;
- the need to maintain confidentiality and respect for the student's language and culture; and
- that each student is considered as an individual.

Thus, the LPAC becomes a critical component of the Bilingual or ESL program.

**How:** The intent of the LPAC Framework Manual 2016-2017 is to establish a framework for the LPAC process and to describe the steps necessary to implement a consistent and standardized process successfully across a school district and across the state. The Framework for the LPAC Process delineates the steps that must be followed in the identification, processing, placement, and monitoring of the ELL in his/her intensive language instructional program as well as the determination for exiting and follow-up of the student as he/she transitions into the mainstream all-English program.

**Location:** The Framework for the LPAC Process can be accessed through the Education Service Center, Region 20's website. [www.esc20.net/lpac](http://www.esc20.net/lpac)



# LPAC

## Language Proficiency Assessment Committee Framework Manual

### Chronology of Federal and State Laws and Policies Impacting Language Minority Students





## Chronology of Federal and State Law and Policy Impacting Language Minority Students

### How has federal policy for language minority students evolved in the U.S.?

- |             |   |
|-------------|---|
| 1920s-1960s | English immersion or “sink-or-swim” policies are the dominant method of instruction of language minority students. Few or no remedial services are available, and students are generally held at the same grade level until enough English is mastered to advance in subject areas.   |
| 1963        | Success of a two-way bilingual program for Cuban refugee children in Dade County, Florida, inspires the implementation of similar programs elsewhere.   |
| 1964        | <i>Civil Rights Act: Title VI</i> prohibits discrimination on the basis of race, color, or national origin in the operation of all federally assisted programs.   |
| 1968        | <i>The Bilingual Education Act, Title VII of the Elementary and Secondary Education Act of 1968</i> : Establishes federal policy for bilingual education for economically disadvantaged language minority students, allocates funds for innovative programs, and recognizes the unique educational disadvantages faced by non-English speaking students.  |
| 1978        | Amendments to <i>Title VII</i> emphasize the strictly transitional nature of native language instruction, expand eligibility to students who are limited English proficient (LEP), and permit enrollment of English-speaking students in bilingual programs.  |
| 1982        | Amendments to <i>Title VII</i> allow for some native language maintenance, provide program funding for LEP students with special needs, support family English literacy programs, and emphasize importance of teacher training.   |
| 1988        | Amendments to <i>Title VII</i> include increased funding to state education agencies, expanded funding for “special alternative” programs where only English is used, established a three-year limit on participation in most <i>Title VII</i> , and created fellowship programs for professional training.   |
| 1994        | Comprehensive educational reforms entail reconfiguration of <i>Title VII</i> programs. New provisions reinforce professional development programs, increase attention to language maintenance and foreign language instruction, improve research and evaluation at state and local level, supply additional funds for immigrant education, and allow participation of some private school students. |

- 2001                    *No Child Left Behind Act of 2001 (NCLB)*: The reauthorization of the Elementary and Secondary Education Act of 1965 appropriates funds to states to improve the education of English Language Learners by assisting children to learn English and meet challenging state academic content and student academic achievement standards. Legislation for English language learners is found under Title III of NCLB.

**What court rulings have impacted the education of language minority students in the U.S.?**

SUPREME COURT

- 1974                    *Lau v. Nichols*  
This suit by Chinese parents in San Francisco leads to the ruling that identical education does not constitute equal education under Title VI of the Civil Rights Act of 1964. School districts must take affirmative steps to overcome educational barriers faced by non-English speakers. This ruling established that the Office for Civil Rights, under the former Department of Health, Education, and Welfare, has the authority to establish regulations for Title VI enforcement.
- 1982                    *Plyler v. Doe*  
Under the Fourteenth Amendment of the U.S. Constitution, the state does not have the right to deny a free public education to undocumented immigrant children.

FEDERAL COURT

- 1971                    *United States of America v. State of Texas, et al.*  
This desegregation case centered on the issue of discrimination and whether the San Felipe and Del Rio school districts were providing Mexican American students an equal educational opportunity. On August 6, 1971, Judge William Wayne Justice ordered the consolidation of the two districts. As a result of the lawsuit, the federal court came down with a court order, Civil Action 5281, which eliminates discrimination on grounds of race, color, or national origin in Texas public and charter schools.

- 1974                    *Serna v. Portales*  
The 10th Circuit Court of Appeals found that Spanish surnamed students' achievement levels were below those of their Anglo counterparts. The court ordered Portales Municipal Schools to implement a bilingual/bicultural curriculum, revise procedures for assessing achievement, and hire bilingual school personnel.
- 1978                    *Cintron v. Brentwood*  
The Federal District Court for the Eastern District of New York rejected the Brentwood School District's proposed bilingual program on the grounds that it would violate "Lau Guidelines" by unnecessarily segregating Spanish-speaking students from their English-speaking peers in music and art. The court also objected to the program's failure to provide for exiting students whose English language proficiency was sufficient for them to understand mainstream English instruction.
- 1978                    *Rios v. Reed*  
The Federal District Court for the Eastern District of New York found that the Pasthogue-Medford School District's transitional bilingual program was basically a course in English and that students were denied an equal educational opportunity by not receiving academic instruction in Spanish. The court wrote: "A denial of educational opportunities to a child in the first years of schooling is not justified by demonstrating that the educational program employed will teach the child English sooner than a program comprised of more extensive Spanish instruction."
- 1981                    *Castañeda v. Pickard*  
Reputed to be the most significant court decision affecting language minority students after Lau. In responding to the plaintiffs' claim that Raymondville, Texas Independent School District's language remediation programs violated the Equal Educational Opportunities Act (EEOA) of 1974, the Fifth Circuit Court of Appeals formulated a set of basic standards to determine school district compliance with EEOA.
- The "Castañeda test" includes the following criteria: (1) *Theory*: The school must pursue a program based on an educational theory recognized as sound or, at least, as a legitimate experimental strategy; (2) *Practice*: The school must actually implement the program with instructional practices, resources, and personnel necessary to transfer theory to reality; (3) *Results*: The school must not persist in a program that fails to produce results.

- 1981 *United States v. State of Texas et al., January 12, 1981*  
The U.S. District Court for the eastern district of Texas, Tyler division, instructs TEA to phase in mandatory bilingual education in grades K-12. This decision outlined specific requirements including: three year monitoring cycles, identification of LEP students, and a language survey for students entering school. It also established the need for exit criteria.
- 1982 *United States v. State of Texas et al., July 12, 1982*  
The U.S. Court of Appeals, Fifth Circuit reverses the previous judgment of U.S. v. State of Texas et al., January 12, 1981 because of state legislation enacted in 1981.
- 1983 *Keyes v. School District #1*  
A U.S. District Court found that a Denver public school district had failed to adequately implement a plan for language minority students, which is the second element of the “Castañeda Test.”
- 1987 *Gomez v. Illinois*  
The Seventh Circuit Court of Appeals ruled that State Education Agencies are also required under EEOA to ensure that language minority student’s educational needs are met.

#### Noteworthy Legislation in Texas Regarding Bilingual Education

- 1969 HB 103  
The 61st legislature passed the state’s first bilingual education bill. This Act acknowledged English as the primary language of instruction in school and allowed but did not require school districts to provide bilingual instruction through Grade 6.
- 1973 SB 121  
The 63rd legislature passed the Texas Bilingual Education and Training Act. This Act directed each school district in which 20 or more LEP students in the same grade shared the same language classification the previous year to institute a program of bilingual instruction beginning with the 1974-75 school year.
- 1978  
In November, the State Board of Education adopted the rules governing the implementation of special language programs for LEP students.
- 1981 SB 477  
This Act strengthened the guidelines necessary to implement the state bilingual plan and established the Language Proficiency Assessment Committees (LPAC).

- 2005            HB 1  
The 79th legislature 3rd called session amended Chapter 29.0561 to specify monitoring criteria during the two(2) years after students exit the special language program.
- 2007            SB 1871  
The 80th legislature enacted the data collection of special language program models; four (4) for bilingual education and two (2) for ESL.
- 2009            HB 3  
The 81st legislature eliminated versions of grade 6 for reading and math Spanish tests.

# LPAC

## Language Proficiency Assessment Committee Framework Manual

### 19 Texas Administrative Code (TAC) Chapter 89. Adaptations for Special Populations Subchapter BB. Commissioner's Rules Concerning State Plan for Educating English Language Learners

<http://programs.esc20.net/default.aspx?name=lpac.resources>



## **Chapter 89. Adaptations for Special Populations**

### **Subchapter BB. Commissioner's Rules Concerning State Plan for Educating English Language Learners**

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**Statutory Authority: The provisions of this Subchapter BB issued under the Texas Education Code, §§29.051, 29.053, 29.054, 29.056, 29.0561, 29.060, and 29.066, unless otherwise noted.**

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#### **§89.1201. Policy.**

- (a) It is the policy of the state that every student in the state who has a home language other than English and who is identified as an English language learner shall be provided a full opportunity to participate in a bilingual education or English as a second language (ESL) program, as required in the Texas Education Code (TEC), Chapter 29, Subchapter B. To ensure equal educational opportunity, as required in the TEC, §1.002(a), each school district shall:
- (1) identify English language learners based on criteria established by the state;
  - (2) provide bilingual education and ESL programs, as integral parts of the regular program as described in the TEC, §4.002;
  - (3) seek certified teaching personnel to ensure that English language learners are afforded full opportunity to master the essential knowledge and skills required by the state; and
  - (4) assess achievement for essential knowledge and skills in accordance with the TEC, Chapter 39, to ensure accountability for English language learners and the schools that serve them.
- (b) The goal of bilingual education programs shall be to enable English language learners to become competent in listening, speaking, reading, and writing in the English language through the development of literacy and academic skills in the primary language and English. Such programs shall emphasize the mastery of English language skills, as well as mathematics, science, and social studies, as integral parts of the academic goals for all students to enable English language learners to participate equitably in school.
- (c) The goal of ESL programs shall be to enable English language learners to become competent in listening, speaking, reading, and writing in the English language through the integrated use of second language methods. The ESL program shall emphasize the mastery of English language skills, as well as mathematics, science, and social studies, as integral parts of the academic goals for all students to enable English language learners to participate equitably in school.
- (d) Bilingual education and ESL programs shall be integral parts of the total school program. Such programs shall use instructional approaches designed to meet the special needs of English language learners. The basic curriculum content of the programs shall be based on the essential knowledge and skills required by the state.

*Source: The provisions of this §89.1201 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective May 28, 2012, 37 TexReg 3822.*

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**§89.1203. Definitions.**

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

- (1) English language learner--A person who is in the process of acquiring English and has another language as the first native language. The terms English language learner and limited English proficient student are used interchangeably.
- (2) Dual language immersion--An educational approach in which students learn two languages in an instructional setting that integrates subject content presented in English and another language. Models vary depending on the amount of each language used for instruction at each grade level. The program must be based on instruction that adds to the student's first language. The implementation of a dual language immersion program model is optional.
- (3) School district--For the purposes of this subchapter, the definition of a school district includes an open-enrollment charter school.

*Source: The provisions of this §89.1203 adopted to be effective May 28, 2012, 37 TexReg 3822.*

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**§89.1205. Required Bilingual Education and English as a Second Language Programs.**

- (a) Each school district that has an enrollment of 20 or more English language learners in any language classification in the same grade level district-wide shall offer a bilingual education program as described in subsection (b) of this section for the English language learners in prekindergarten through the elementary grades who speak that language. "Elementary grades" shall include at least prekindergarten through Grade 5; sixth grade shall be included when clustered with elementary grades.
- (b) A school district shall provide a bilingual education program by offering dual language instruction in prekindergarten through the elementary grades, using one of the four bilingual program models described in §89.1210 of this title (relating to Program Content and Design).
- (c) School districts are authorized to establish a bilingual education program at grade levels in which the bilingual education program is not required under subsection (a) of this section.
- (d) All English language learners for whom a school district is not required to offer a bilingual education program shall be provided an English as a second language program as described in subsection (e) of this section, regardless of the students' grade levels and home language, and regardless of the number of such students.
- (e) A school district shall provide English as a second language instruction by offering an English as a second language program using one of the two models described in §89.1210 of this title.
- (f) School districts may join with other school districts to provide bilingual education or English as a second language programs.

*Source: The provisions of this §89.1205 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective March 5, 1999, 24 TexReg 1383; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective September 17, 2007, 32 TexReg 6311; amended to be effective May 28, 2012, 37 TexReg 3822.*

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**§89.1207. Exceptions and Waivers.**

- (a) Bilingual education program.
  - (1) Exceptions. A school district that is unable to provide a bilingual education program as required by §89.1205(a) of this title (relating to Required Bilingual Education and English as a Second Language Programs) shall request from the commissioner of education an exception to the bilingual education program and the approval of an alternative program. The approval of an exception to the bilingual education program shall be valid only during the school year for which it was granted. A request for a bilingual education program exception must be submitted by November 1 and shall include:
    - (A) a statement of the reasons the school district is unable to offer the bilingual education program with supporting documentation;
    - (B) a description of the proposed alternative modified bilingual education or intensive English as a second language programs designed to meet the affective, linguistic, and cognitive needs of the English language learners, including the manner through which the students will be given opportunity to master the essential knowledge and skills required by Chapter 74 of this title (relating to Curriculum Requirements);
    - (C) an acknowledgement that certified teachers available in the school district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels to ensure that the linguistic and academic needs of the English language learners with beginning levels of English proficiency are served on a priority basis;
    - (D) a description of the training program the school district will provide to improve the skills of the certified teachers that are assigned to implement the proposed alternative program and an assurance that at least 10% of the bilingual education allotment shall be used to fund this training program; and
    - (E) a description of the actions the school district will take to ensure that the program required under §89.1205(a) of this title will be provided the subsequent year, including its plans for recruiting and training an adequate number of certified teachers to eliminate the need for subsequent exceptions and measurable targets for the subsequent year.
  - (2) Approval of exceptions. Bilingual education program exceptions will be granted by the commissioner if the requesting school district:
    - (A) meets or exceeds the state average for English language learner performance on the required state assessments;

- (B) meets the requirements and measurable targets of the action plan described in paragraph (1)(E) of this subsection submitted the previous year and approved by the Texas Education Agency (TEA); or
    - (C) reduces by 25% the number of teachers under exception for bilingual Spanish programs when compared to the number of exceptions granted the previous year.
  - (3) Denial of exceptions. A school district denied a bilingual education program exception must submit to the commissioner a detailed action plan for complying with required regulations for the following school year.
  - (4) Appeals. A school district denied a bilingual education program exception may appeal to the commissioner or the commissioner's designee. The decision of the commissioner or commissioner's designee is final and may not be appealed further.
  - (5) Special accreditation investigation. The commissioner may authorize a special accreditation investigation under the Texas Education Code (TEC), §39.057, if a school district:
    - (A) is denied a bilingual education program exception for more than three consecutive years; or
    - (B) is granted an exception based on meeting or exceeding the state average for English language learner performance on the required state assessments but has excessive numbers of allowable exemptions from the required state assessments.
  - (6) Sanctions. Based on the results of a special accreditation investigation, the commissioner may take appropriate action under the TEC, §39.102.
- (b) English as a second language program.
- (1) Waivers. A school district that is unable to provide an English as a second language program as required by §89.1205(d) of this title because of an insufficient number of certified teachers shall request from the commissioner a waiver of the certification requirements for each teacher who will provide instruction in English as a second language for English language learners. The approval of a waiver of certification requirements shall be valid only during the school year for which it was granted. A request for an English as a second language program waiver must be submitted by November 1 and shall include:
    - (A) a statement of the reasons the school district is unable to provide a sufficient number of certified teachers to offer the English as a second language program;
    - (B) a description of the manner in which the teachers in the English as a second language program will meet the affective, linguistic, and cognitive needs of the English language learners, including the manner through which the students will be given opportunity to master the essential knowledge and skills required by Chapter 74 of this title;

- (C) an assurance that certified teachers available in the school district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels in the elementary school campus and, if needed, secondary campuses, to ensure that the linguistic and academic needs of the English language learners with the lower levels of English proficiency are served on a priority basis;
  - (D) the name of each teacher not on permit who is assigned to implement the English as a second language program and for each teacher under a waiver, the estimated date for the completion of the English as a second language supplemental certification, which must be completed by the end of the school year for which the waiver was requested;
  - (E) a description of the training program that the school district will provide to improve the skills of the certified teachers that are assigned to implement the proposed English as a second language program and an assurance that at least 10% of the bilingual education allotment shall be used to fund this training; and
  - (F) a description of the actions the school district will take to ensure that the program required under §89.1205(d) of this title will be provided the subsequent year, including its plans for recruiting and training an adequate number of certified teachers to eliminate the need for subsequent waivers.
- (2) Approval of waivers. English as a second language waivers will be granted by the commissioner if the requesting school district:
- (A) meets or exceeds the state average for English language learner performance on the required state assessments; or
  - (B) meets the requirements and measurable targets of the action plan described in paragraph (1)(F) of this subsection submitted the previous year and approved by the TEA.
- (3) Denial of waivers. A school district denied an English as a second language program waiver must submit to the commissioner a detailed action plan for complying with required regulations for the following school year.
- (4) Appeals. A school district denied an English as a second language waiver may appeal to the commissioner or the commissioner's designee. The decision of the commissioner or commissioner's designee is final and may not be appealed further.
- (5) Special accreditation investigation. The commissioner may authorize a special accreditation investigation under the TEC, §39.057, if a school district:
- (A) is denied an English as a second language waiver for more than three consecutive years; or
  - (B) is granted a waiver based on meeting or exceeding the state average for English language learner performance on the required state assessments but has excessive numbers of allowable exemptions from the required state assessments.

- (6) Sanctions. Based on the results of a special accreditation investigation, the commissioner may take appropriate action under the TEC, §39.102.

*Source: The provisions of this §89.1207 adopted to be effective September 17, 2007, 32 TexReg 6311; amended to be effective May 28, 2012, 37 TexReg 3822.*

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**§89.1210. Program Content and Design.**

- (a) Each school district required to offer a bilingual education or English as a second language program shall provide each English language learner the opportunity to be enrolled in the required program at his or her grade level. Each student's level of proficiency shall be designated by the language proficiency assessment committee in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee). The school district shall modify the instruction, pacing, and materials to ensure that English language learners have a full opportunity to master the essential knowledge and skills of the required curriculum. Students participating in the bilingual education program may demonstrate their mastery of the essential knowledge and skills in either their home language or in English for each content area.
- (b) The bilingual education program shall be a full-time program of instruction in which both the students' home language and English shall be used for instruction. The amount of instruction in each language within the bilingual education program shall be commensurate with the students' level of proficiency in each language and their level of academic achievement. The students' level of language proficiency and academic achievement shall be designated by the language proficiency assessment committee. The Texas Education Agency (TEA) shall develop program guidelines to ensure that the programs are developmentally appropriate, that the instruction in each language is appropriate, and that the students are challenged to perform at a level commensurate with their linguistic proficiency and academic potential.
- (c) The bilingual education program shall be an integral part of the regular educational program required under Chapter 74 of this title (relating to Curriculum Requirements). In bilingual education programs using Spanish and English as languages of instruction, school districts shall use state-adopted English and Spanish instructional materials and supplementary materials as curriculum tools to enhance the learning process; in addition, school districts may use other curriculum adaptations that have been developed. The bilingual education program shall address the affective, linguistic, and cognitive needs of English language learners as follows.
- (1) Affective. English language learners shall be provided instruction in their home language to introduce basic concepts of the school environment, and instruction both in their home language and in English, which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall address the history and cultural heritage associated with both the students' home language and the United States.
- (2) Linguistic. English language learners shall be provided instruction in the skills of listening, speaking, reading, and writing both in their home language and in English. The instruction in both languages shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills in all subjects.



- (3) Cognitive. English language learners shall be provided instruction in language arts, mathematics, science, and social studies both in their home language and in English. The content area instruction in both languages shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills in all subjects.
- (d) The bilingual education program shall be implemented with consideration for each English language learner's unique readiness level through one of the following program models.
- (1) Transitional bilingual/early exit is a bilingual program model that serves a student identified as limited English proficient in both English and Spanish, or another language, and transfers the student to English-only instruction. This model provides instruction in literacy and academic content areas through the medium of the student's first language, along with instruction in English oral and academic language development. Non-academic subjects such as art, music, and physical education may also be taught in English. Exiting of a student to an all-English program of instruction will occur no earlier than the end of Grade 1 or, if the student enrolls in school during or after Grade 1, no earlier than two years or later than five years after the student enrolls in school. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title (relating to Testing and Classification of Students) may continue receiving services, but the school district will not receive the bilingual education allotment for that student.
  - (2) Transitional bilingual/late exit is a bilingual program model that serves a student identified as limited English proficient in both English and Spanish, or another language, and transfers the student to English-only instruction. Academic growth is accelerated through cognitively challenging academic work in the student's first language along with meaningful academic content taught through the student's second language, English. The goal is to promote high levels of academic achievement and full academic language proficiency in the student's first language and English. A student enrolled in a transitional bilingual/late exit program is eligible to exit the program no earlier than six years or later than seven years after the student enrolls in school. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student.
  - (3) Dual language immersion/two-way is a biliteracy program model that integrates students proficient in English and students identified as limited English proficient. This model provides instruction in both English and Spanish, or another language, and transfers a student identified as limited English proficient to English-only instruction. Instruction is provided to both native English speakers and native speakers of another language in an instructional setting where language learning is integrated with content instruction. Academic subjects are taught to all students through both English and the other language. Program exit will occur no earlier than six years or later than seven years after the student enrolls in school. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student. The primary goals of a dual language immersion program model are:

- (A) the development of fluency and literacy in English and another language for all students, with special attention given to English language learners participating in the program;
  - (B) the integration of English speakers and English language learners for academic instruction, in accordance with the program design and model selected by the school district board of trustees. Whenever possible, 50% of the students in a program should be dominant English speakers and 50% of the students should be native speakers of the other language at the beginning of the program; and
  - (C) the promotion of bilingualism, biliteracy, cross-cultural awareness, and high academic achievement.
- (4) Dual language immersion/one-way is a biliteracy program model that serves only students identified as limited English proficient. This model provides instruction in both English and Spanish, or another language, and transfers a student to English-only instruction. Instruction is provided to English language learners in an instructional setting where language learning is integrated with content instruction. Academic subjects are taught to all students through both English and the other language. Program exit will occur no earlier than six years or later than seven years after the student enrolls in school. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student. The primary goals of a dual language immersion program model are:
- (A) the development of fluency and literacy in English and another language for all students, with special attention given to English language learners participating in the program;
  - (B) the integration of English speakers and English language learners for academic instruction, in accordance with the program design and model selected by the school district board of trustees; and
  - (C) the promotion of bilingualism, biliteracy, cross-cultural awareness, and high academic achievement.
- (e) English as a second language programs shall be intensive programs of instruction designed to develop proficiency in listening, speaking, reading, and writing in the English language. Instruction in English as a second language shall be commensurate with the student's level of English proficiency and his or her level of academic achievement. In prekindergarten through Grade 8, instruction in English as a second language may vary from the amount of time accorded to instruction in English language arts in the general education program for English proficient students to a full-time instructional setting using second language methods. In high school, the English as a second language program shall be consistent with graduation requirements under Chapter 74 of this title. The language proficiency assessment committee may recommend appropriate services that may include content courses provided through sheltered instructional approaches by trained teachers, enrollment in English as a second language courses, additional state elective English courses, and special assistance provided through locally determined programs.
- (f) The English as a second language program shall be an integral part of the regular educational program required under Chapter 74 of this title. School districts shall use state-adopted English as a second language instructional materials and supplementary materials as

curriculum tools. In addition, school districts may use other curriculum adaptations that have been developed. The school district shall provide for ongoing coordination between the English as a second language program and the regular educational program. The English as a second language program shall address the affective, linguistic, and cognitive needs of English language learners as follows.

- (1) Affective. English language learners shall be provided instruction using second language methods in English to introduce basic concepts of the school environment, which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall address the history and cultural heritage associated with both the students' home language and the United States.
  - (2) Linguistic. English language learners shall be provided intensive instruction to develop proficiency in listening, speaking, reading, and writing in the English language. The instruction in academic content areas shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills.
  - (3) Cognitive. English language learners shall be provided instruction in English in language arts, mathematics, science, and social studies using second language methods. The instruction in academic content areas shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills.
- (g) The English as a second language program shall be implemented with consideration for each English language learner's unique readiness level through one of the following program models.
- (1) An English as a second language/content-based program model is an English program that serves only students identified as English language learners by providing a full-time teacher certified under the Texas Education Code (TEC), §29.061(c), to provide supplementary instruction for all content area instruction. The program integrates English as a second language instruction with subject matter instruction that focuses not only on learning a second language, but using that language as a medium to learn mathematics, science, social studies, or other academic subjects. Exiting of a student to an all-English program of instruction without English as a second language support will occur no earlier than the end of Grade 1 or, if the student enrolls in school during or after Grade 1, no earlier than two years or later than five years after the student enrolls in school. At the high school level, the English language learner receives sheltered instruction in all content areas. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student.
  - (2) An English as a second language/pull-out program model is an English program that serves only students identified as English language learners by providing a part-time teacher certified under the TEC, §29.061(c), to provide English language arts instruction exclusively, while the student remains in a mainstream instructional arrangement in the remaining content areas. Instruction may be provided by the English as a second language teacher in a pull-out or inclusionary delivery model. Exiting of a student to an all-English program of instruction without English as a second language support will occur no earlier than the end of Grade 1 or, if the student enrolls in school during or after Grade 1, no earlier than two years or later than five years after the student enrolls in school. At the high school level, the English language

learner receives sheltered instruction in all content areas. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student.

- (h) Except in the courses specified in subsection (i) of this section, English as a second language strategies, which may involve the use of the students' home language, may be provided in any of the courses or electives required for promotion or graduation to assist the English language learners to master the essential knowledge and skills for the required subject(s). The use of English as a second language strategies shall not impede the awarding of credit toward meeting promotion or graduation requirements.
- (i) In subjects such as art, music, and physical education, the English language learners shall participate with their English-speaking peers in regular classes provided in the subjects. The school district shall ensure that students enrolled in bilingual education and English as a second language programs have a meaningful opportunity to participate with other students in all extracurricular activities.
- (j) The required bilingual education or English as a second language programs shall be provided to every English language learner with parental approval until such time that the student meets exit criteria as described in §89.1225(h) of this title or graduates from high school.

*Source: The provisions of this §89.1210 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective March 5, 1999, 24 TexReg 1383; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective May 28, 2012, 37 TexReg 3822.*

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### **§89.1215. Home Language Survey.**

- (a) School districts shall conduct only one home language survey of each student. The home language survey shall be administered to each student new to the school district and to students previously enrolled who were not surveyed in the past. School districts shall require that the survey be signed by the student's parent or guardian for each student in prekindergarten through Grade 8, or by the student in Grades 9-12. The original copy of the survey shall be kept in the student's record.
- (b) The home language survey shall be administered in English and Spanish; for students of other language groups, the home language survey shall be translated into the home language whenever possible. The home language survey shall contain the following questions.
  - (1) "What language is spoken in your home most of the time?"
  - (2) "What language does your child speak most of the time?"
- (c) Additional information may be collected by the school district and recorded on the home language survey.
- (d) The home language survey shall be used to establish the student's language classification for determining whether the school district is required to provide a bilingual education or English as a second language program. If the response on the home language survey indicates that a language other than English is used, the student shall be tested in accordance with §89.1225 of this title (relating to Testing and Classification of Students).

Source: The provisions of this §89.1215 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective May 28, 2012, 37 TexReg 3822.

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**§89.1220. Language Proficiency Assessment Committee.**

- (a) School districts shall by local board policy establish and operate a language proficiency assessment committee. The school district shall have on file policy and procedures for the selection, appointment, and training of members of the language proficiency assessment committee(s).
- (b) In school districts required to provide a bilingual education program, the language proficiency assessment committee shall be composed of the membership described in the Texas Education Code (TEC), §29.063. If the school district does not have an individual in one or more of the school job classifications required, the school district shall designate another professional staff member to serve on the language proficiency assessment committee. The school district may add other members to the committee in any of the required categories.
- (c) In school districts and grade levels not required to provide a bilingual education program, the language proficiency assessment committee shall be composed of one or more professional personnel, a campus administrator, and a parent of an English language learner participating in the program designated by the school district.
- (d) No parent serving on the language proficiency assessment committee shall be an employee of the school district.
- (e) A school district shall establish and operate a sufficient number of language proficiency assessment committees to enable them to discharge their duties within 20 school days of the enrollment of English language learners.
- (f) All members of the language proficiency assessment committee, including parents, shall be acting for the school district and shall observe all laws and rules governing confidentiality of information concerning individual students. The school district shall be responsible for the orientation and training of all members, including the parents, of the language proficiency assessment committee.
- (g) Upon their initial enrollment and at the end of each school year, the language proficiency assessment committee shall review all pertinent information on all English language learners identified in accordance with §89.1225(f) of this title (relating to Testing and Classification of Students), and shall:
  - (1) designate the language proficiency level of each English language learner in accordance with the guidelines issued pursuant to §89.1210(b) and (e) of this title (relating to Program Content and Design);
  - (2) designate the level of academic achievement of each English language learner;
  - (3) designate, subject to parental approval, the initial instructional placement of each English language learner in the required program;
  - (4) facilitate the participation of English language learners in other special programs for which they are eligible provided by the school district with either state or federal funds; and

- (5) classify students as English proficient in accordance with the criteria described in §89.1225(h) of this title, and recommend their exit from the bilingual education or English as a second language program.
- (h) Before the administration of the state criterion-referenced test each year, the language proficiency assessment committee shall determine the appropriate assessment option for each English language learner as outlined in Chapter 101, Subchapter AA, of this title (relating to Commissioner's Rules Concerning the Participation of English Language Learners in State Assessments).
- (i) The language proficiency assessment committee shall give written notice to the student's parent advising that the student has been classified as an English language learner and requesting approval to place the student in the required bilingual education or English as a second language program. The notice shall include information about the benefits of the bilingual education or English as a second language program for which the student has been recommended and that it is an integral part of the school program.
- (j) Pending parent approval of an English language learner's entry into the bilingual education or English as a second language program recommended by the language proficiency assessment committee, the school district shall place the student in the recommended program, but may count only English language learners with parental approval for the bilingual education allotment.
- (k) The language proficiency assessment committee shall monitor the academic progress of each student who has exited from a bilingual or English as a second language program during the first two years after exiting in accordance with the TEC, §29.0561.
- (l) The student's record shall contain documentation of all actions impacting the English language learner.
  - (1) Documentation shall include:
    - (A) the identification of the student as an English language learner;
    - (B) the designation of the student's level of language proficiency;
    - (C) the recommendation of program placement;
    - (D) parental approval of entry or placement into the program;
    - (E) the dates of entry into, and placement within, the program;
    - (F) assessment information as outlined in Chapter 101, Subchapter AA, of this title;
    - (G) additional instructional interventions provided to students to ensure adequate yearly progress;
    - (H) the date of exit from the program and parental approval; and
    - (I) the results of monitoring for academic success, including students formerly classified as English language learners, as required under the TEC, §29.063(c)(4).
  - (2) Current documentation as described in paragraph (1) of this subsection shall be forwarded in the same manner as other student records to another school district in which the student enrolls.



- (m) A school district may identify, exit, or place a student in a program without written approval of the student's parent or guardian if:
  - (1) the student is 18 years of age or has had the disabilities of minority removed;
  - (2) reasonable attempts to inform and obtain permission from a parent or guardian have been made and documented;
  - (3) approval is obtained from:
    - (A) an adult who the school district recognizes as standing in parental relation to the student, including a foster parent or employee of a state or local governmental agency with temporary possession or control of the student; or
    - (B) the student, if no parent, guardian, or other responsible adult is available; or
  - (4) a parent or guardian has not objected in writing to the proposed entry, exit, or placement.

*Source: The provisions of this §89.1220 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective March 5, 1999, 24 TexReg 1383; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective September 17, 2007, 32 TexReg 6311; amended to be effective May 28, 2012, 37 TexReg 3822.*

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**§89.1225. Testing and Classification of Students.**

- (a) For identifying English language learners, school districts shall administer to each student who has a language other than English as identified on the home language survey:
  - (1) in prekindergarten through Grade 1, an oral language proficiency test approved by the Texas Education Agency (TEA); and
  - (2) in Grades 2-12, a TEA-approved oral language proficiency test and the English reading and English language arts sections from a TEA-approved norm-referenced assessment, or another test approved by the TEA, unless the norm-referenced standardized achievement instrument is not valid in accordance with subsection (f)(2)(C) of this section.
- (b) School districts that provide a bilingual education program shall administer an oral language proficiency test in the home language of the student who is eligible to be served in the bilingual education program. If the home language of the student is Spanish, the school district shall administer the Spanish version of the TEA-approved oral language proficiency test that was administered in English. If the home language of the student is other than Spanish, the school district shall determine the student's level of proficiency using informal oral language assessment measures.
- (c) All the oral language proficiency testing shall be administered by professionals or paraprofessionals who are proficient in the language of the test and trained in language proficiency testing.
- (d) The grade levels and the scores on each test that shall identify a student as an English language learner shall be established by the TEA. The commissioner of education shall review the approved list of tests, grade levels, and scores annually and update the list.

- (e) Students with a language other than English shall be administered the required oral language proficiency test in prekindergarten through Grade 12 and norm-referenced standardized achievement instrument in Grades 2-12 within 20 school days of their enrollment.
- (f) For entry into a bilingual education or English as a second language program, a student shall be identified as an English language learner using the following criteria.
  - (1) In prekindergarten through Grade 1, the student's score on the English oral language proficiency test is below the level designated for indicating limited English proficiency under subsection (d) of this section.
  - (2) In Grades 2-12:
    - (A) the student's score on the English oral language proficiency test is below the level designated for indicating limited English proficiency under subsection (d) of this section;
    - (B) the student's score on the English reading and/or English language arts sections of the TEA-approved norm-referenced standardized achievement instrument at his or her grade level is below the 40th percentile; or
    - (C) the student's ability in English is so limited that the administration, at his or her grade level, of the reading and language arts sections of a TEA-approved norm-referenced standardized achievement instrument or other test approved by the TEA is not valid.
  - (3) In the absence of data required in paragraph (2)(B) of this subsection, evidence that the student is not academically successful as defined in subsection (j) of this section is required.
  - (4) The admission review and dismissal (ARD) committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and designated level of performance for indicating limited English proficiency as required under subsection (d) of this section for students for whom those tests would be inappropriate as part of the individualized education program (IEP). The decision for entry into a bilingual education or English as a second language program shall be determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee).
- (g) Within 20 school days of their initial enrollment in the school district, students shall be identified as English language learners and enrolled into the required bilingual education or English as a second language program. Prekindergarten and kindergarten students preregistered in the spring shall be identified as English language learners and enrolled in the required bilingual education or English as a second language program within 20 school days of the start of the school year in the fall.
- (h) For exit from a bilingual education or English as a second language program, a student may be classified as English proficient at the end of the school year in which a student would be able to participate equally in a general education, all-English instructional program. This determination shall be based upon all of the following:
  - (1) TEA-approved tests that measure the extent to which the student has developed oral and written language proficiency and specific language skills in English;

- (2) satisfactory performance on the reading assessment instrument under the Texas Education Code (TEC), §39.023(a), or a TEA-approved English language arts assessment instrument administered in English, or a score at or above the 40th percentile on both the English reading and the English language arts sections of a TEA-approved norm-referenced standardized achievement instrument for a student who is enrolled in Grade 1 or 2; and
  - (3) TEA-approved criterion-referenced written tests when available, or other TEA-approved tests when criterion-referenced tests are not available, and the results of a subjective teacher evaluation.
- (i) A student may not be exited from the bilingual education or English as a second language program in prekindergarten or kindergarten. A school district must ensure that English language learners are prepared to meet academic standards required by the TEC, §28.0211.
  - (j) For determining whether a student who has been exited from a bilingual education or English as a second language program is academically successful, the following criteria shall be used at the end of the school year:
    - (1) the student meets state performance standards in English on the criterion-referenced assessment instrument required in the TEC, §39.023, for the grade level as applicable; and
    - (2) the student has passing grades in all subjects and courses taken.
  - (k) The ARD committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and performance standard requirement for exit under subsection (h) of this section for students for whom those tests would be inappropriate as part of the IEP. The decision to exit a student who receives both special education and special language services from the bilingual education or English as a second language program is determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with applicable provisions of subsection (h) of this section.
  - (l) Notwithstanding §101.101 of this title (relating to Group-Administered Tests), all tests used for the purpose of identification, exit, and placement of students and approved by the TEA must be re-normed at least every eight years.

*Source: The provisions of this §89.1225 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective September 17, 2007, 32 TexReg 6311; amended to be effective May 28, 2012, 37 TexReg 3822.*

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### **§89.1227. Minimum Requirements for Dual Language Immersion Program Model.**

- (a) A dual language immersion program model must address all curriculum requirements specified in Chapter 74, Subchapter A, of this title (relating to Required Curriculum) to include foundation and enrichment areas, English language proficiency standards, and college and career readiness standards.
- (b) A dual language immersion program model shall be a full-time program of academic instruction in English and another language.

- (c) A minimum of 50% of instructional time must be provided in the language other than English.
- (d) Implementation should:
  - (1) begin at prekindergarten, kindergarten, or Grade 1, as applicable;
  - (2) continue without interruption incrementally through the elementary grades whenever possible; and
  - (3) consider expansion to middle school and high school whenever possible.
- (e) A dual language immersion program model shall be developmentally appropriate and based on current best practices research.

*Source: The provisions of this §89.1227 adopted to be effective May 28, 2012, 37 TexReg 3822.*

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**§89.1228. Dual Language Immersion Program Model Implementation.**

- (a) Student enrollment in a dual language immersion program model is optional.
- (b) A dual language immersion program model must fully disclose candidate selection criteria and ensure that access to the program is not based on race, creed, color, religious affiliation, age, or disability.
- (c) A school district must obtain written parental approval for student participation in the program sequence and model established by the school district.
- (d) A school district implementing a dual language immersion program model must develop a policy on enrollment and continuation for students in this program model. The policy must address:
  - (1) eligibility criteria;
  - (2) program purpose;
  - (3) grade levels in which the program will be implemented;
  - (4) support of program goals as stated in §89.1210 of this title (relating to Program Content and Design); and
  - (5) expectations for students and parents.

*Source: The provisions of this §89.1228 adopted to be effective May 28, 2012, 37 TexReg 3822.*

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**§89.1230. Eligible Students with Disabilities.**

- (a) School districts shall implement assessment procedures that differentiate between language proficiency and handicapping conditions in accordance with Subchapter AA of this chapter (relating to Commissioner's Rules Concerning Special Education Services) and shall establish placement procedures that ensure that placement in a bilingual education or English as a second language program is not refused solely because the student has a disability.

- (b) Admission, review, and dismissal committee members shall meet in conjunction with language proficiency assessment committee members to review the educational needs of each English language learner who qualifies for services in the special education program.

*Source: The provisions of this §89.1230 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective March 5, 1999, 24 TexReg 1383; amended to be effective May 28, 2012, 37 TexReg 3822.*

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### **§89.1233. Participation of English Proficient Students.**

School districts may enroll students who are not English language learners in the bilingual education program in accordance with the Texas Education Code, §29.058.

*Source: The provisions of this §89.1233 adopted to be effective March 5, 1999, 24 TexReg 1383 amended to be effective May 28, 2012, 37 TexReg 3822.*

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### **§89.1235. Facilities.**

Bilingual education and English as a second language programs shall be located in the regular public schools of the school district rather than in separate facilities. In order to provide the required bilingual education or English as a second language programs, school districts may concentrate the programs at a limited number of facilities within the school district provided that the enrollment in those facilities shall not exceed 60% English language learners. Recent immigrant English language learners enrolled in newcomer centers shall return to home campuses no later than two years after initial enrollment in a newcomer program.

*Source: The provisions of this §89.1235 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective May 28, 2012, 37 TexReg 3822.*

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### **§89.1240. Parental Authority and Responsibility.**

- (a) The parents shall be notified that their child has been classified as an English language learner and recommended for placement in the required bilingual education or English as a second language program. They shall be provided information describing the bilingual education or English as a second language program recommended, its benefits to the student, and its being an integral part of the school program to ensure that the parents understand the purposes and content of the program. The entry or placement of a student in the bilingual education or English as a second language program must be approved in writing by the student's parent. The parent's approval shall be considered valid for the student's continued participation in the required bilingual education or English as a second language program until the student meets the exit criteria described in §89.1225(h) of this title (relating to Testing and Classification of Students), graduates from high school, or the parent requests a change in program placement.
- (b) The school district shall notify the student's parent of the student's reclassification as English proficient and his or her exit from the bilingual education or English as a second language program and acquire approval as required under the Texas Education Code, §29.056(a). Students meeting exit requirements may continue in the bilingual education or English as a

second language program with parental approval but are not eligible for inclusion in the school district bilingual education allotment.

- (c) The parent of a student enrolled in a school district that is required to offer bilingual education or English as a second language programs may appeal to the commissioner of education if the school district fails to comply with the law or the rules. Appeals shall be filed in accordance with Chapter 157 of this title (relating to Hearings and Appeals).

*Source: The provisions of this §89.1240 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective May 28, 2012, 37 TexReg 3822.*

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#### **§89.1245. Staffing and Staff Development.**

- (a) School districts shall take all reasonable affirmative steps to assign appropriately certified teachers to the required bilingual education and English as a second language programs in accordance with the Texas Education Code (TEC), §29.061, concerning bilingual education and special language program teachers. School districts that are unable to secure a sufficient number of certified bilingual education and English as a second language teachers to provide the required programs, shall request emergency teaching permits or special assignment permits, as appropriate, in accordance with Chapter 230 of this title (relating to Professional Educator Preparation and Certification).
- (b) School districts that are unable to employ a sufficient number of teachers, including part-time teachers, who meet the requirements of subsection (a) of this section for the bilingual education and English as a second language programs shall apply on or before November 1 for an exception to the bilingual education program as provided in §89.1207(a) of this title (relating to Exceptions and Waivers) or a waiver of the certification requirements in the English as a second language program as provided in §89.1207(b) of this title as needed.
- (c) Teachers assigned to the bilingual education program and/or English as a second language program may receive salary supplements as authorized by the TEC, §42.153.
- (d) School districts may compensate teachers and aides assigned to bilingual education and English as a second language programs for participation in continuing education programs designed to increase their skills or lead to bilingual education or English as a second language certification.
- (e) School districts that are unable to staff their bilingual education and English as a second language programs with fully certified teachers shall use at least 10% of their bilingual education allotment for preservice and inservice training to improve the skills of the teachers who provide instruction in the alternative bilingual education program, instruction in English as a second language, and/or content area instruction in special classes for English language learners.
- (f) The commissioner of education shall encourage school districts to cooperate with colleges and universities to provide training for teachers assigned to the bilingual education and/or English as a second language programs.
- (g) The Texas Education Agency (TEA) shall develop, in collaboration with education service centers (ESCs), bilingual education training guides for implementing bilingual education and English as a second language training programs. The materials shall provide a framework for:

- (1) developmentally appropriate bilingual education programs for early childhood through the elementary grades;
- (2) affectively appropriate instruction in bilingual education and English as a second language programs in accordance with §89.1210(c)(1) and (f)(1) of this title (relating to Program Content and Design);
- (3) linguistically appropriate bilingual education and English as a second language programs in accordance with §89.1210(c)(2) and (f)(2) of this title;
- (4) cognitively appropriate programs for English language learners in accordance with §89.1210(c)(3) and (f)(3) of this title; and
- (5) developmentally appropriate programs for English language learners identified as gifted and talented and English language learners with disabilities.

*Source: The provisions of this §89.1245 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective March 5, 1999, 24 TexReg 1383; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective May 28, 2012, 37 TexReg 3822.*

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#### **§89.1250. Required Summer School Programs.**

Summer school programs that are provided under the Texas Education Code (TEC), §29.060, for English language learners who will be eligible for admission to kindergarten or Grade 1 at the beginning of the next school year shall be implemented in accordance with this section.

- (1) Purpose of summer school programs.
  - (A) English language learners shall have an opportunity to receive special instruction designed to prepare them to be successful in kindergarten and Grade 1.
  - (B) Instruction shall focus on language development and essential knowledge and skills appropriate to the level of the student.
  - (C) The program shall address the affective, linguistic, and cognitive needs of the English language learners in accordance with §89.1210(c) and (f) of this title (relating to Program Content and Design).
- (2) Establishment of, and eligibility for, the program.
  - (A) Each school district required to offer a bilingual or English as a second language (ESL) program in accordance with the TEC, §29.053, shall offer the summer program.
  - (B) To be eligible for enrollment:
    - (i) a student must be eligible for admission to kindergarten or to Grade 1 at the beginning of the next school year and must be an English language learner; and

- (ii) a parent or guardian must have approved placement of the English language learner in the required bilingual or ESL program following the procedures described in §89.1220(g) of this title (relating to Language Proficiency Assessment Committee) and §89.1225(a)-(f) of this title (relating to Testing and Classification of Students).
  - (C) Limited English proficiency shall be determined by evaluating students using an oral language proficiency test approved by the Texas Education Agency.
- (3) Operation of the program.
  - (A) Enrollment is optional.
  - (B) The program shall be operated on a one-half day basis, a minimum of three hours each day, for eight weeks or the equivalent of 120 hours of instruction.
  - (C) The student/teacher ratio for the program district-wide shall not exceed 18 to one.
  - (D) A school district is not required to provide transportation for the summer program.
  - (E) Teachers shall possess certification or endorsement as required in the TEC, §29.061, and §89.1245 of this title (relating to Staffing and Staff Development).
  - (F) Reporting of student progress shall be determined by the board of trustees. A summary of student progress shall be provided to parents at the conclusion of the program. This summary shall be provided to the student's teacher at the beginning of the next regular school term.
  - (G) A school district may join with other school districts in cooperative efforts to plan and implement programs.
  - (H) The summer school program shall not substitute for any other program required to be provided during the regular school term, including those required in the TEC, §29.153.
- (4) Funding and records for programs.
  - (A) A school district shall use state and local funds for program purposes. School districts may use federal funds, consistent with requirements for the expenditure of federal funds, for the program.
    - (i) Available funds appropriated by the legislature for the support of summer school programs provided under the TEC, §29.060, shall be allocated to school districts in accordance with this subsection.
    - (ii) Funding for the summer school program shall be on a unit basis in such an allocation system to ensure a pupil/teacher ratio of not more than 18 to one. The numbers of students required to earn units shall be established by the commissioner. The allotment per unit shall be determined by the commissioner based on funds available.
    - (iii) Any school district required to offer the program under paragraph (2)(A) of this subsection that has less than ten students district-wide desiring to participate is not required to operate the program. However, those



school districts must demonstrate that they have aggressively attempted to encourage student participation.

- (iv) Payment to school districts for summer school programs shall be based on units employed. This information must be submitted in a manner and according to a schedule established by the commissioner in order for a school district to be eligible for funding.

- (B) A school district shall maintain records of eligibility, attendance, and progress of students.

*Source: The provisions of this §89.1250 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective February 17, 2005, 30 TexReg 709; amended to be effective September 17, 2007, 32 TexReg 6311; amended to be effective May 28, 2012, 37 TexReg 3822.*

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#### **§89.1265. Evaluation.**

- (a) All school districts required to conduct a bilingual education or English as a second language program shall conduct periodic assessment in the languages of instruction to determine program impact and student outcomes in all subject areas.
- (b) Annual reports of educational performance shall reflect the academic progress in either language of the English language learners, the extent to which they are becoming proficient in English, the number of students who have been exited from the bilingual education and English as a second language programs, and the number of teachers and aides trained and the frequency, scope, and results of the training. These reports shall be retained at the district level.
- (c) School districts shall report to parents the progress of their child as a result of participation in the program offered to English language learners in English and the home language at least annually.
- (d) Each school year, the principal of each school campus, with the assistance of the campus level committee, shall develop, review, and revise the campus improvement plan described in the Texas Education Code, §11.253, for the purpose of improving student performance for English language learners.

*Source: The provisions of this §89.1265 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective May 28, 2012, 37 TexReg 3822.*

**§89.1267. Standards for Evaluation of Dual Language Immersion Program Models.**

- (a) A school district implementing a dual language immersion program must conduct annual formative and summative evaluations collecting a full range of data to determine program impact on student academic success.
- (b) The success of a dual language immersion program is evident by students in the program demonstrating high levels of language proficiency in English and the other language and mastery of the Texas essential knowledge and skills for the foundation and enrichment areas. Indicators of success may include scores on statewide student assessments in English, statewide student assessments in Spanish (if appropriate), norm-referenced standardized achievement tests in both languages, and/or language proficiency tests in both languages.

*Source: The provisions of this §89.1267 adopted to be effective May 28, 2012, 37 TexReg 3822.*

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**§89.1269. General Standards for Recognition of Dual Language Immersion Program Models.**

- (a) School district recognition. An exceptional dual language immersion program model may be recognized by the local school district board of trustees using the following criteria.
  - (1) A school district must exceed the minimum requirements stated in §89.1227 of this title (relating to Minimum Requirements for Dual Language Immersion Program Model).
  - (2) A school district must not receive the lowest performance rating in the state accountability system.
  - (3) A school district must not be identified for any stage of intervention for the district's bilingual and/or English as a second language program under the performance-based monitoring system.
  - (4) A school district must meet the adequate yearly progress participation and performance criteria in reading and mathematics for the English language learner student group under Elementary and Secondary Education Act (ESEA) regulations.
- (b) Student recognition. A student participating in a dual language immersion program model may be recognized by the program and its local school district board of trustees using the following criteria.
  - (1) The student must meet or exceed statewide student assessment passing standards, as required by the Texas Education Code, §39.024, in all subject areas at the appropriate grade level.
  - (2) The student must meet or exceed expected levels of language proficiency on a recognized language proficiency test from the list of tests approved by the commissioner of education.

*Source: The provisions of this §89.1269 adopted to be effective May 28, 2012, 37 TexReg 3822.*

# LPAC

## Language Proficiency Assessment Committee Framework Manual

### Texas Education Code, Subchapter B. Bilingual Education and Special Language Programs (29.051-29.066)

<http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.29.htm>

## Subchapter B. Bilingual Education and Special Language Programs

### Sec. 29.051. State Policy.

English is the basic language of this state. Public schools are responsible for providing a full opportunity for all students to become competent in speaking, reading, writing, and comprehending the English language. Large numbers of students in the state come from environments in which the primary language is other than English. Experience has shown that public school classes in which instruction is given only in English are often inadequate for the education of those students. The mastery of basic English language skills is a prerequisite for effective participation in the state's educational program. Bilingual education and special language programs can meet the needs of those students and facilitate their integration into the regular school curriculum. Therefore, in accordance with the policy of the state to ensure equal educational opportunity to every student, and in recognition of the educational needs of students of limited English proficiency, this subchapter provides for the establishment of bilingual education and special language programs in the public schools and provides supplemental financial assistance to help school districts meet the extra costs of the programs.

Added by Acts 1995, 74th Leg., Ch. 260, Sec. 1, eff. May 30, 1995.

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### Sec. 29.052. Definitions.

In this subchapter:

- (1) "Student of limited English proficiency" means a student whose primary language is other than English and whose English language skills are such that the student has difficulty performing ordinary class work in English.
- (2) "Parent" includes a legal guardian of a student.

Added by Acts 1995, 74th Leg., Ch. 260, Sec. 1, eff. May 30, 1995.

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### Sec. 29.053. Establishment of Bilingual Education and Special Language Programs

(a) The agency shall establish a procedure for identifying school districts that are required to offer bilingual education and special language programs in accordance with this subchapter.

(b) Within the first four weeks following the first day of school, the language proficiency assessment committee established under Section 29.063 shall determine and report to the board of trustees of the district the number of students of limited English proficiency on each campus and shall classify each student according to the language in which the student possesses primary proficiency. The board shall report that information to the agency before November 1 each year.

(c) Each district with an enrollment of 20 or more students of limited English proficiency in any language classification in the same grade level shall offer a bilingual education or special language program.

(d) Each district that is required to offer bilingual education and special language programs under this section shall offer the following for students of limited English proficiency:

- (1) Bilingual education in kindergarten through the elementary grades;
- (2) Bilingual education, instruction in English as a second language, or other transitional language instruction approved by the agency in post-elementary grades through grade 8; and
- (3) Instruction in English as a second language in grades 9 through 12

Added by Acts 1995, 74th Leg., Ch. 260, Sec. 1, eff. May 30, 1995.

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**Sec. 29.054. Exception.**

(a) If a program other than bilingual education must be used in kindergarten through the elementary grades, documentation for the exception must be filed with and approved by the agency.

(b) An application for an exception may be filed with the agency when a district is unable to hire a sufficient number of teachers with teaching certificates appropriate for bilingual education instruction to staff the required program. The application must be accompanied by:

- (1) documentation showing that the district has taken all reasonable affirmative steps to secure teachers with teaching certificates appropriate for bilingual education instruction and has failed;
- (2) documentation showing that the district has affirmative hiring policies and procedures consistent with the need to serve limited English proficiency students;
- (3) documentation showing that, on the basis of district records, no teacher having a teaching Texas Education certificate appropriate for bilingual instruction or emergency credentials has been unjustifiably denied employment by the district within the past 12 months; and
- (4) a plan detailing specific measures to be used by the district to eliminate the conditions that created the need for an exception.

(c) An exception shall be granted under this section on an individual district basis and is valid for only one year. Application for an exception for a second or succeeding year must be accompanied by the documentation prescribed by Subsection (b).



(d) During the period for which a district is granted an exception under this section, the district must use alternative methods approved by the agency to meet the needs of its students of limited English proficiency, including hiring teaching personnel under a bilingual emergency permit.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

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**Sec. 29.055. Program Content; Method of Instruction.**

(a) A bilingual education program established by a school district shall be a full-time program of dual language instruction that provides for learning basic skills in the primary language of the students enrolled in the program and for carefully structured and sequenced mastery of English language skills. A program of instruction in English as a second language established by a school district shall be a program of intensive instruction in English from teachers trained in recognizing and dealing with language differences.

(b) A program of bilingual education or of instruction in English as a second language shall be designed to consider the students' learning experiences and shall incorporate the cultural aspects of the students' backgrounds.

(c) In subjects such as art, music, and physical education, students of limited English proficiency shall participate fully with English-speaking students in regular classes provided in the subjects

(d) Elective courses included in the curriculum may be taught in a language other than English

(e) Each school district shall provide students enrolled in the program a meaningful opportunity to participate fully with other students in all extracurricular activities.

(f) If money is appropriated for the purpose, the agency shall establish a limited number of pilot programs for the purpose of examining alternative methods of instruction in bilingual education and special language programs.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

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**Sec. 29.056. Enrollment of Students in Program.**

(a) The agency shall establish standardized criteria for the identification, assessment, and classification of students of limited English proficiency eligible for entry into the program or exit from the program. The student's parent must approve a student's entry into the program, exit from the program, or placement in the program. The school district or parent may appeal the decision under Section 29.064. The criteria for identification, assessment, and classification may include:

(1) results of a home language survey conducted within four weeks of each student's enrollment to determine the language normally used in the home and the language normally used by the

student, conducted in English and the home language, signed by the student's parents if the student is in kindergarten through grade 8 or by the student if the student is in grades 9 through 12, and kept in the student's permanent folder by the language proficiency assessment committee;

(2) the results of an agency-approved English language proficiency test administered to all students identified through the home survey as normally speaking a language other than English to determine the level of English language proficiency, with students in kindergarten or grade 1 being administered an oral English proficiency test and students in grades 2 through 12 being administered an oral and written English proficiency test; and

(3) the results of an agency-approved proficiency test in the primary language administered to all students identified under Subdivision (2) as being of limited English proficiency to determine the level of primary language proficiency, with students in kindergarten or grade 1 being administered an oral primary language proficiency test and students in grades 2 through 12 being administered an oral and written primary language proficiency test.

(b) Tests under Subsection (a) shall be administered by professionals or paraprofessionals with the appropriate English and primary language skills and the training required by the test publisher.

(c) The language proficiency assessment committee may classify a student as limited English proficiency if:

(1) the student's ability in English is so limited or the student's disabilities are so severe that assessment procedures cannot be administered;

(2) the student's score or relative degree of achievement on the agency-approved English proficiency test is below the levels established by the agency as indicative of reasonable proficiency;

(3) the student's primary language proficiency score as measured by an agency-approved test is greater than the student's proficiency in English; or

(4) the language proficiency assessment committee determines, based on other information, including a teacher evaluation, parental viewpoint, or student interview, that the student's primary language proficiency is greater than the student's proficiency in English, or that the student is not reasonably proficient in English.

(d) Not later than the 10th day after the date of the student's classification as a student of limited English proficiency, the language proficiency assessment committee shall give written notice of the classification to the student's parent. The notice must be in English and the parent's primary language. The parents of students eligible to participate in the required bilingual education program shall be informed of the benefits of the bilingual education or special language program and that it is an integral part of the school program.

(e) The language proficiency assessment committee may retain, for documentation purposes, all records obtained under this section.

(f) The district may not refuse to provide instruction in a language other than English to a student solely because the student has a disability.

(g) A district may transfer a student of limited English proficiency out of a bilingual education or special language program for the first time or a subsequent time if the student is able to participate equally in a regular all-English instructional program as determined by:

(1) agency-approved tests administered at the end of each school year to determine the extent to which the student has developed oral and written language proficiency and specific language skills in English;

(2) satisfactory performance on the reading assessment instrument under Section 39.023(a) or an English language arts assessment instrument under Section 39.023(c), as applicable, with the assessment instrument administered in English, or, if the student is enrolled in the first or second grade, an achievement score at or above the 40th percentile in the reading and language arts sections of an English standardized test approved by the agency; and

(3) agency-approved criterion-referenced tests and the results of a subjective teacher evaluation.

(h) If later evidence suggests that a student who has been transferred out of a bilingual education or special language program has inadequate English proficiency and achievement, the language proficiency assessment committee may reenroll the student in the program. Classification of students for reenrollment must be based on the criteria required by this section.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2006, 79th Leg., 3rd C.S., ch. 5, Sec. 3.06, eff. May 26, 2006.

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**Sec. 29.0561. Evaluation of Transferred Students; Reenrollment.**

(a) The language proficiency assessment committee shall reevaluate a student who is transferred out of a bilingual education or special language program under Section 29.056(g) if the student earns a failing grade in a subject in the foundation curriculum under Section 28.002(a)(1) during any grading period in the first two school years after the student is transferred to determine whether the student should be reenrolled in a bilingual education or special language program.

(b) During the first two school years after a student is transferred out of a bilingual education or special language program under Section 29.056(g), the language proficiency assessment committee shall review the student's performance and consider:



- (1) the total amount of time the student was enrolled in a bilingual education or special language program;
- (2) the student's grades each grading period in each subject in the foundation curriculum under Section 28.002(a)(1);
- (3) the student's performance on each assessment instrument administered under Section 39.023 (a) or (c)
- (4) the number of credits the student has earned toward high school graduation, if applicable;
- (5) any disciplinary actions taken against the student under Subchapter A, Chapter 37.

(c) After an evaluation under this section, the language proficiency assessment committee may require intensive instruction for the student or reenroll the student in a bilingual education or special language program.

Added by Acts 2006, 79th Leg., 3rd C.S., ch. 5, Sec. 3.07, eff. May 26, 2006.

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**Sec. 29.057. Facilities; Classes.**

- (a) Bilingual education and special language programs must be located in the regular public schools of the district rather than in separate facilities.
- (b) Students enrolled in bilingual education or a special language program shall be placed in classes with other students of approximately the same age and level of educational attainment. The school district shall ensure that the instruction given each student is appropriate to the student's level of educational attainment, and the district shall keep adequate records of the educational level and progress of each student enrolled in the program.
- (c) The maximum student-teacher ratio shall be set by the agency and shall reflect the special educational needs of students enrolled in the programs.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

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**Sec. 29.058. Enrollment of Students Who Do Not Have Limited English Proficiency**

With the approval of the school district and a student's parents, a student who does not have limited English proficiency may also participate in a bilingual education program. The number of participating students who do not have limited English proficiency may not exceed 40 percent of the number of students enrolled in the program.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

**Sec. 29.059. Cooperation Among Districts**

(a) A school district may join with one or more other districts to provide the bilingual education and special language programs required by this subchapter. The availability of the programs shall be publicized throughout the districts involved.

(b) A school district may allow a nonresident student of limited English proficiency to enroll in or attend its bilingual education or special language programs if the student's district of residence does not provide an appropriate program. The tuition for the student shall be paid by the district in which the student resides.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

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**Sec. 29.060. Preschool, Summer School, and Extended Time Programs**

(a) Each school district that is required to offer a bilingual education or special language program shall offer a voluntary program for children of limited English proficiency who will be eligible for admission to kindergarten or the first grade at the beginning of the next school year. A school that operates on a system permitted by this code other than a semester system shall offer 120 hours of instruction on a schedule the board of trustees of the district establishes.

A school that operates on a semester system shall offer the program:

(1) during the period school is recessed for the summer; and

(2) for one-half day for eight weeks or on a similar schedule approved by the board of trustees.

(b) Enrollment of a child in the program is optional with the parent of the child.

(c) The program must be an intensive bilingual education or special language program that meets standards established by the agency. The student/teacher ratio for the program may not exceed 18/1.

(d) A school district may establish on a full- or part-time basis other summer school, extended day, or extended week bilingual education or special language programs for students of limited English proficiency and may join with other districts in establishing the programs.

(e) The programs required or authorized by this section may not be a substitute for programs required to be provided during the regular school year.

(f) The legislature may appropriate money from the foundation school fund for support of a program under Subsection (a).

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

**Sec. 29.061. Bilingual Education and Special Language Program Teachers**

(a) The State Board for Educator Certification shall provide for the issuance of teaching certificates appropriate for bilingual education instruction to teachers who possess a speaking, reading, and writing ability in a language other than English in which bilingual education programs are offered and who meet the general August 2008 Requirements of Chapter 21. The board shall also provide for the issuance of teaching certificates appropriate for teaching English as a second language. The board may issue emergency endorsements in bilingual education and in teaching English as a second language.

(b) A teacher assigned to a bilingual education program must be appropriately certified for bilingual education by the board. (1) transitional bilingual/early exit program model; or (2) transitional bilingual/late exit program model.

(b-1) A teacher assigned to a bilingual education program using a dual language immersion/one-way or two-way program model must be appropriately certified by the board for: (1) bilingual education for the component of the program provided in a language other than English; and (2) bilingual education or English as a second language for the component of the program provided in English.

(b-2) A school district that provides a bilingual education program using a dual language immersion/one-way or two-way program model may assign a teacher certified under Subsection (b-1)(1) for the language other than English component of the program and a different teacher certified under Subsection (b-1)(2) for the English language component.

(c) A teacher assigned to an English as a second language program must be appropriately certified for English as a second language by the board.

(d) A school district may compensate a bilingual education or special language teacher for participating in a continuing education program that is in addition to the teacher's regular contract. The continuing education program must be designed to provide advanced bilingual education or special language program endorsement or skills.

(e) The State Board for Educator Certification and the Texas Higher Education Coordinating Board shall develop a comprehensive plan for meeting the teacher supply needs created by the programs outlined in this subchapter.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by: Acts 2015, 84th Leg., R.S., Ch. 453 (H.B. 218), Sec. 1, eff. June 15, 2015.

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**Sec. 29.062. Compliance.**

(a) The legislature recognizes that compliance with this subchapter is an imperative public necessity. Therefore, in accordance with the policy of the state, the agency shall evaluate the effectiveness of programs under this subchapter based on the academic excellence indicators adopted under Section 39.051(a), including the results of assessment instruments. The agency may combine evaluations under this section with federal accountability measures concerning students of limited English proficiency.

(b) The areas to be monitored shall include:

- (1) program content and design;
- (2) program coverage;
- (3) identification procedures;
- (4) classification procedures;
- (5) staffing;
- (6) learning materials;
- (7) testing materials;
- (8) reclassification of students for either entry into regular classes conducted exclusively in English or reentry into a bilingual education or special education program; and
- (9) activities of the language proficiency assessment committees.

(c) Not later than the 30th day after the date of an on-site monitoring inspection, the agency shall report its findings to the school district or open-enrollment charter school and to the division of accreditation.

(d) The agency shall notify a school district or open-enrollment charter school found in noncompliance in writing, not later than the 30th day after the date of the on-site monitoring. The district or open-enrollment charter school shall take immediate corrective action.

(e) If a school district or open-enrollment charter school fails to satisfy appropriate standards adopted by the commissioner for purposes of Subsection (a), the agency shall apply sanctions, which may include the removal of accreditation, loss of foundation school funds, or both.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2003, 78th Leg., ch. 201, Sec. 19, eff. Sept. 1, 2003.

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**Sec. 29.063. Language Proficiency Assessment Committees.**

(a) Each school district that is required to offer bilingual education and special language programs shall establish a language proficiency assessment committee.

(b) Each committee shall include a professional bilingual educator, a professional transitional language educator, a parent of a limited English proficiency student, and a campus administrator

(c) The language proficiency assessment committee shall:

- (1) review all pertinent information on limited English proficiency students, including the home language survey, the language proficiency tests in English and the primary language, each student's achievement in content areas, and each student's emotional and social attainment;
- (2) make recommendations concerning the most appropriate placement for the educational advancement of the limited English proficiency student after the elementary grades;
- (3) review each limited English proficiency student's progress at the end of the school year

## Language Proficiency Assessment Committee (LPAC)

in order to determine future appropriate placement;

(4) monitor the progress of students formerly classified as limited English proficiency who have transferred out of the bilingual education or special language program and, based on the information, designate the most appropriate placement for such students; and

(5) determine the appropriateness of a program that extends beyond the regular school year based on the needs of each limited English proficiency student.

(d) The agency may prescribe additional duties for language proficiency assessment committees.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

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**Sec. 29.064. Appeals.** A parent of a student enrolled in a school district offering bilingual education or special language programs may appeal to the commissioner if the district fails to comply with the requirements established by law or by the agency as authorized by this subchapter. If the parent disagrees with the placement of the student in the program, the parent may appeal that decision to the board of trustees. Appeals shall be conducted in accordance with procedures adopted by the commissioner.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

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### **Sec. 29.066. PEIMS Reporting Requirements.**

(a) A school district that is required to offer bilingual education or special language programs shall include the following information in the district's Public Education Information Management System (PEIMS) report:

(1) demographic information, as determined by the commissioner, on students enrolled in district bilingual education or special language programs;

(2) the number and percentage of students enrolled in each instructional model of a bilingual education or special language program offered by the district; and

(3) the number and percentage of students identified as students of limited English proficiency who do not receive specialized instruction.

(b) For purposes of this section, the commissioner shall adopt rules to classify programs under this section as follows:

(1) if the program is a bilingual education program, the program must be classified under the Public Education Information Management System (PEIMS) report as:

(A) transitional bilingual/early exit: a bilingual program that serves students identified as students of limited English proficiency in both English and Spanish and transfers a student

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to English-only instruction not earlier than two or later than five years after the student enrolls in school;

(B) transitional bilingual/late exit: a bilingual program that serves students identified as students of limited English proficiency in both English and Spanish and transfers a student to English-only instruction not earlier than six or later than seven years after the student enrolls in school;

(C) dual language immersion/two-way: a biliteracy program that integrates students proficient in English and students identified as students of limited English proficiency in both English and Spanish and transfers a student identified as a student of limited English proficiency to English-only instruction not earlier than six or later than seven years after the student enrolls in school; or

(D) dual language immersion/one-way: a biliteracy program that serves only students identified as students of limited English proficiency in both English and Spanish and transfers a student to English-only instruction not earlier than six or later than seven years after the student enrolls in school; and

(2) if the program is a special language program, the program must be classified under the Public Education Information Management System (PEIMS) report as:

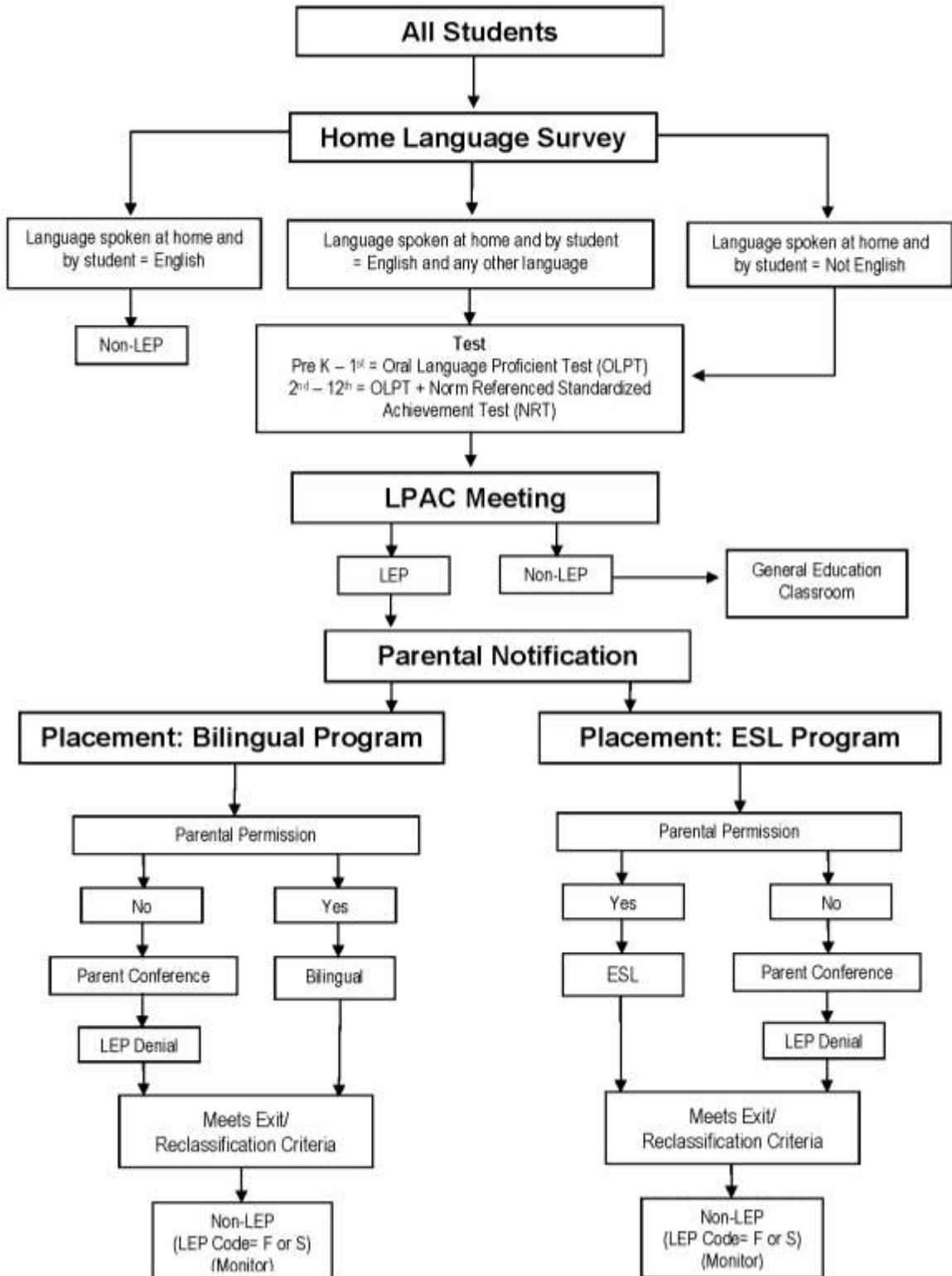
(A) English as a second language/content-based: an English program that serves students identified as students of limited English proficiency in English only by providing a full-time teacher certified under Section 29.061(c) to provide supplementary instruction for all content area instruction; or

(B) English as a second language/pull-out: an English program that serves students identified as students of limited English proficiency in English only by providing a part-time teacher certified under Section 29.061(c) to provide English language arts instruction exclusively, while the student remains in a mainstream instructional arrangement in the remaining content areas.

(c) If the school district has received a waiver and is not required to offer a bilingual education or special language program in a student's native language or if the student's parents have refused to approve the student's entry into a program as provided by Section 29.056, the program must be classified under the Public Education Information Management System (PEIMS) report as: no bilingual education or special language services provided.

Added by Acts 2007, 80th Leg., R.S., Ch. 1340, Sec. 2, eff. June 15, 2007.

## Limited English Proficient Training Flowchart



## All Students



### §89.1201. Policy.

- (a) It is the policy of the state that every student in the state who has a home language other than English and who is identified as an English language learner shall be provided a full opportunity to participate in a bilingual education or English as a second language (ESL) program, as required in the Texas Education Code (TEC), Chapter 29, Subchapter B. To ensure equal educational opportunity, as required in the TEC, §1.002(a), each school district shall:
- (1) identify English language learners based on criteria established by the state;
  - (2) provide bilingual education and ESL programs, as integral parts of the regular program as described in the TEC, §4.002;
  - (3) seek certified teaching personnel to ensure that English language learners are afforded full opportunity to master the essential knowledge and skills required by the state; and
  - (4) assess achievement for essential knowledge and skills in accordance with the TEC, Chapter 39, to ensure accountability for English language learners and the schools that serve them.
- (b) The goal of bilingual education programs shall be to enable English language learners to become competent in listening, speaking, reading, and writing in the English language through the development of literacy and academic skills in the primary language and English. Such programs shall emphasize the mastery of English language skills, as well as mathematics, science, and social studies, as integral parts of the academic goals for all students to enable English language learners to participate equitably in school.
- (c) The goal of ESL programs shall be to enable English language learners to become competent in listening, speaking, reading, and writing in the English language through the integrated use of second language methods. The ESL program shall emphasize the mastery of English language skills, as well as mathematics, science, and social studies, as integral parts of the academic goals for all students to enable English language learners to participate equitably in school.
- (d) Bilingual education and ESL programs shall be integral parts of the total school program. Such programs shall use instructional approaches designed to meet the special needs of English language learners. The basic curriculum content of the programs shall be based on the essential knowledge and skills required by the state.

*Source: The provisions of this §89.1201 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective May 28, 2012, 37 TexReg 3822.*





**§89.1235. Facilities.**

Bilingual education and English as a second language programs shall be located in the regular public schools of the school district rather than in separate facilities. In order to provide the required bilingual education or English as a second language programs, school districts may concentrate the programs at a limited number of facilities within the school district provided that the enrollment in those facilities shall not exceed 60% English language learners. Recent immigrant English language learners enrolled in newcomer centers shall return to home campuses no later than two years after initial enrollment in a newcomer program.

*Source: The provisions of this §89.1235 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective May 28, 2012, 37 TexReg 3822.*

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**§89.1203. Definitions.**

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

- (1) English language learner--A person who is in the process of acquiring English and has another language as the first native language. The terms English language learner and limited English proficient student are used interchangeably.
- (2) Dual language immersion--An educational approach in which students learn two languages in an instructional setting that integrates subject content presented in English and another language. Models vary depending on the amount of each language used for instruction at each grade level. The program must be based on instruction that adds to the student's first language. The implementation of a dual language immersion program model is optional.
- (3) School district--For the purposes of this subchapter, the definition of a school district includes an open-enrollment charter school.

*Source: The provisions of this §89.1203 adopted to be effective May 28, 2012, 37 TexReg 3822.*

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**§89.1245. Staffing and Staff Development.**

- (a) School districts shall take all reasonable affirmative steps to assign appropriately certified teachers to the required bilingual education and English as a second language programs in accordance with the Texas Education Code (TEC), §29.061, concerning bilingual education and special language program teachers. School districts that are unable to secure a sufficient number of certified bilingual education and English as a second language teachers to provide the required programs, shall request emergency teaching permits or special assignment permits, as appropriate, in accordance with Chapter 230 of this title (relating to Professional Educator Preparation and Certification).
- (b) School districts that are unable to employ a sufficient number of teachers, including part-time teachers, who meet the requirements of subsection (a) of this section for the bilingual education and English as a second language programs shall apply on or before November 1 for an exception to the bilingual education program as provided in §89.1207(a) of this title

(relating to Exceptions and Waivers) or a waiver of the certification requirements in the English as a second language program as provided in §89.1207(b) of this title as needed.

- (c) Teachers assigned to the bilingual education program and/or English as a second language program may receive salary supplements as authorized by the TEC, §42.153.
- (d) School districts may compensate teachers and aides assigned to bilingual education and English as a second language programs for participation in continuing education programs designed to increase their skills or lead to bilingual education or English as a second language certification.
- (e) School districts that are unable to staff their bilingual education and English as a second language programs with fully certified teachers shall use at least 10% of their bilingual education allotment for preservice and inservice training to improve the skills of the teachers who provide instruction in the alternative bilingual education program, instruction in English as a second language, and/or content area instruction in special classes for English language learners.
- (f) The commissioner of education shall encourage school districts to cooperate with colleges and universities to provide training for teachers assigned to the bilingual education and/or English as a second language programs.
- (g) The Texas Education Agency (TEA) shall develop, in collaboration with education service centers (ESCs), bilingual education training guides for implementing bilingual education and English as a second language training programs. The materials shall provide a framework for:
  - (1) developmentally appropriate bilingual education programs for early childhood through the elementary grades;
  - (2) affectively appropriate instruction in bilingual education and English as a second language programs in accordance with §89.1210(c)(1) and (f)(1) of this title (relating to Program Content and Design);
  - (3) linguistically appropriate bilingual education and English as a second language programs in accordance with §89.1210(c)(2) and (f)(2) of this title;
  - (4) cognitively appropriate programs for English language learners in accordance with §89.1210(c)(3) and (f)(3) of this title; and
  - (5) developmentally appropriate programs for English language learners identified as gifted and talented and English language learners with disabilities.

*Source: The provisions of this §89.1245 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective March 5, 1999, 24 TexReg 1383; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective May 28, 2012, 37 TexReg 3822.*

## Exceptions and Waivers



### §89.1207. Exceptions and Waivers.

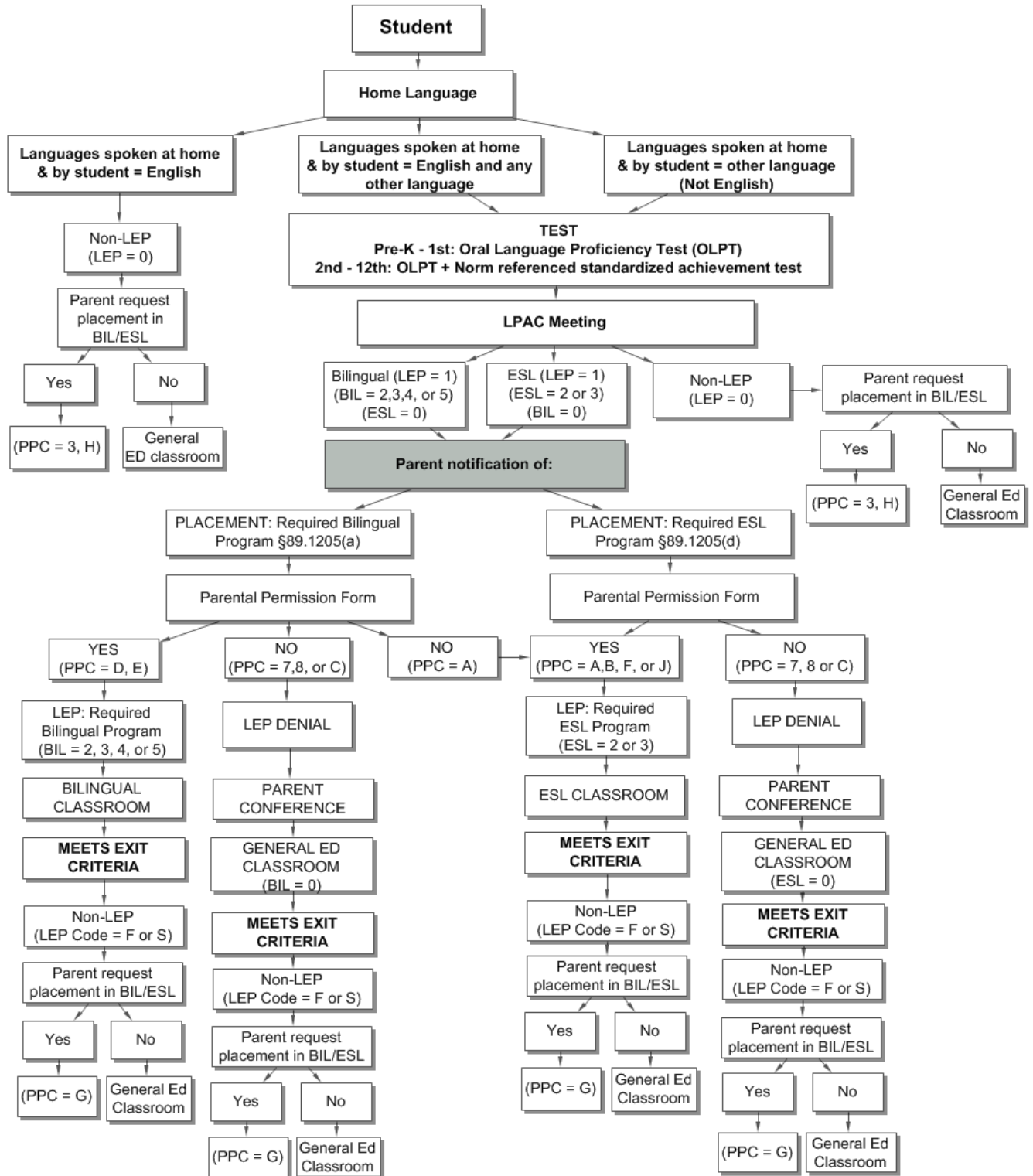
- (a) Bilingual education program.
- (1) Exceptions. A school district that is unable to provide a bilingual education program as required by §89.1205(a) of this title (relating to Required Bilingual Education and English as a Second Language Programs) shall request from the commissioner of education an exception to the bilingual education program and the approval of an alternative program. The approval of an exception to the bilingual education program shall be valid only during the school year for which it was granted. A request for a bilingual education program exception must be submitted by November 1 and shall include:
- (A) a statement of the reasons the school district is unable to offer the bilingual education program with supporting documentation;
  - (B) a description of the proposed alternative modified bilingual education or intensive English as a second language programs designed to meet the affective, linguistic, and cognitive needs of the English language learners, including the manner through which the students will be given opportunity to master the essential knowledge and skills required by Chapter 74 of this title (relating to Curriculum Requirements);
  - (C) an acknowledgement that certified teachers available in the school district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels to ensure that the linguistic and academic needs of the English language learners with beginning levels of English proficiency are served on a priority basis;
  - (D) a description of the training program the school district will provide to improve the skills of the certified teachers that are assigned to implement the proposed alternative program and an assurance that at least 10% of the bilingual education allotment shall be used to fund this training program; and
  - (E) a description of the actions the school district will take to ensure that the program required under §89.1205(a) of this title will be provided the subsequent year, including its plans for recruiting and training an adequate number of certified teachers to eliminate the need for subsequent exceptions and measurable targets for the subsequent year.
- (2) Approval of exceptions. Bilingual education program exceptions will be granted by the commissioner if the requesting school district:
- (A) meets or exceeds the state average for English language learner performance on the required state assessments;
  - (B) meets the requirements and measurable targets of the action plan described in paragraph (1)(E) of this subsection submitted the previous year and approved by the Texas Education Agency (TEA); or

- (C) reduces by 25% the number of teachers under exception for bilingual Spanish programs when compared to the number of exceptions granted the previous year.
- (3) Denial of exceptions. A school district denied a bilingual education program exception must submit to the commissioner a detailed action plan for complying with required regulations for the following school year.
- (4) Appeals. A school district denied a bilingual education program exception may appeal to the commissioner or the commissioner's designee. The decision of the commissioner or commissioner's designee is final and may not be appealed further.
- (5) Special accreditation investigation. The commissioner may authorize a special accreditation investigation under the Texas Education Code (TEC), §39.057, if a school district:
  - (A) is denied a bilingual education program exception for more than three consecutive years; or
  - (B) is granted an exception based on meeting or exceeding the state average for English language learner performance on the required state assessments but has excessive numbers of allowable exemptions from the required state assessments.
- (6) Sanctions. Based on the results of a special accreditation investigation, the commissioner may take appropriate action under the TEC, §39.102.
- (b) English as a second language program.
  - (1) Waivers. A school district that is unable to provide an English as a second language program as required by §89.1205(d) of this title because of an insufficient number of certified teachers shall request from the commissioner a waiver of the certification requirements for each teacher who will provide instruction in English as a second language for English language learners. The approval of a waiver of certification requirements shall be valid only during the school year for which it was granted. A request for an English as a second language program waiver must be submitted by November 1 and shall include:
    - (A) a statement of the reasons the school district is unable to provide a sufficient number of certified teachers to offer the English as a second language program;
    - (B) a description of the manner in which the teachers in the English as a second language program will meet the affective, linguistic, and cognitive needs of the English language learners, including the manner through which the students will be given opportunity to master the essential knowledge and skills required by Chapter 74 of this title;
    - (C) an assurance that certified teachers available in the school district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels in the elementary school campus and, if needed, secondary campuses, to ensure that the linguistic and academic needs of the English language learners with the lower levels of English proficiency are served on a priority basis;

- (D) the name of each teacher not on permit who is assigned to implement the English as a second language program and for each teacher under a waiver, the estimated date for the completion of the English as a second language supplemental certification, which must be completed by the end of the school year for which the waiver was requested;
  - (E) a description of the training program that the school district will provide to improve the skills of the certified teachers that are assigned to implement the proposed English as a second language program and an assurance that at least 10% of the bilingual education allotment shall be used to fund this training; and
  - (F) a description of the actions the school district will take to ensure that the program required under §89.1205(d) of this title will be provided the subsequent year, including its plans for recruiting and training an adequate number of certified teachers to eliminate the need for subsequent waivers.
- (2) Approval of waivers. English as a second language waivers will be granted by the commissioner if the requesting school district:
    - (A) meets or exceeds the state average for English language learner performance on the required state assessments; or
    - (B) meets the requirements and measurable targets of the action plan described in paragraph (1)(F) of this subsection submitted the previous year and approved by the TEA.
  - (3) Denial of waivers. A school district denied an English as a second language program waiver must submit to the commissioner a detailed action plan for complying with required regulations for the following school year.
  - (4) Appeals. A school district denied an English as a second language waiver may appeal to the commissioner or the commissioner's designee. The decision of the commissioner or commissioner's designee is final and may not be appealed further.
  - (5) Special accreditation investigation. The commissioner may authorize a special accreditation investigation under the TEC, §39.057, if a school district:
    - (A) is denied an English as a second language waiver for more than three consecutive years; or
    - (B) is granted a waiver based on meeting or exceeding the state average for English language learner performance on the required state assessments but has excessive numbers of allowable exemptions from the required state assessments.
  - (6) Sanctions. Based on the results of a special accreditation investigation, the commissioner may take appropriate action under the TEC, §39.102.

*Source: The provisions of this §89.1207 adopted to be effective September 17, 2007, 32 TexReg 6311; amended to be effective May 28, 2012, 37 TexReg 3822.*

## Limited English Proficient Decision Chart



**BIL = Bilingual Program Code    ESL = English as a Second Language Code    LEP = Limited English Proficient Code    PPC = Parental Permission Code**

## Home Language Survey



### §89.1215. Home Language Survey.

- (a) School districts shall conduct only one home language survey of each student. The home language survey shall be administered to each student new to the school district and to students previously enrolled who were not surveyed in the past. School districts shall require that the survey be signed by the student's parent or guardian for each student in prekindergarten through Grade 8, or by the student in Grades 9-12. The original copy of the survey shall be kept in the student's record.
- (b) The home language survey shall be administered in English and Spanish; for students of other language groups, the home language survey shall be translated into the home language whenever possible. The home language survey shall contain the following questions.
  - (1) "What language is spoken in your home most of the time?"
  - (2) "What language does your child speak most of the time?"
- (c) Additional information may be collected by the school district and recorded on the home language survey.
- (d) The home language survey shall be used to establish the student's language classification for determining whether the school district is required to provide a bilingual education or English as a second language program. If the response on the home language survey indicates that a language other than English is used, the student shall be tested in accordance with §89.1225 of this title (relating to Testing and Classification of Students).

*Source: The provisions of this §89.1215 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective May 28, 2012, 37 TexReg 3822.*

## Entry Assessment



### §89.1225. Testing and Classification of Students.

- (a) For identifying English language learners, school districts shall administer to each student who has a language other than English as identified on the home language survey:
  - (1) in prekindergarten through Grade 1, an oral language proficiency test approved by the Texas Education Agency (TEA); and
  - (2) in Grades 2-12, a TEA-approved oral language proficiency test and the English reading and English language arts sections from a TEA-approved norm-referenced assessment, or another test approved by the TEA, unless the norm-referenced standardized achievement instrument is not valid in accordance with subsection (f)(2)(C) of this section.
- (b) School districts that provide a bilingual education program shall administer an oral language proficiency test in the home language of the student who is eligible to be served in the bilingual education program. If the home language of the student is Spanish, the school district shall administer the Spanish version of the TEA-approved oral language proficiency test that was administered in English. If the home language of the student is other than Spanish, the school district shall determine the student's level of proficiency using informal oral language assessment measures.
- (c) All the oral language proficiency testing shall be administered by professionals or paraprofessionals who are proficient in the language of the test and trained in language proficiency testing.
- (d) The grade levels and the scores on each test that shall identify a student as an English language learner shall be established by the TEA. The commissioner of education shall review the approved list of tests, grade levels, and scores annually and update the list.
- (e) Students with a language other than English shall be administered the required oral language proficiency test in prekindergarten through Grade 12 and norm-referenced standardized achievement instrument in Grades 2-12 within 20 school days of their enrollment.
- (f) For entry into a bilingual education or English as a second language program, a student shall be identified as an English language learner using the following criteria.
  - (1) In prekindergarten through Grade 1, the student's score on the English oral language proficiency test is below the level designated for indicating limited English proficiency under subsection (d) of this section.
  - (2) In Grades 2-12:
    - (A) the student's score on the English oral language proficiency test is below the level designated for indicating limited English proficiency under subsection (d) of this section;
    - (B) the student's score on the English reading and/or English language arts sections of the TEA-approved norm-referenced standardized achievement instrument at his or her grade level is below the 40th percentile; or



- (C) the student's ability in English is so limited that the administration, at his or her grade level, of the reading and language arts sections of a TEA-approved norm-referenced standardized achievement instrument or other test approved by the TEA is not valid.
- (3) In the absence of data required in paragraph (2)(B) of this subsection, evidence that the student is not academically successful as defined in subsection (j) of this section is required.
- (4) The admission review and dismissal (ARD) committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and designated level of performance for indicating limited English proficiency as required under subsection (d) of this section for students for whom those tests would be inappropriate as part of the individualized education program (IEP). The decision for entry into a bilingual education or English as a second language program shall be determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee).
- (g) Within 20 school days of their initial enrollment in the school district, students shall be identified as English language learners and enrolled into the required bilingual education or English as a second language program. Prekindergarten and kindergarten students preregistered in the spring shall be identified as English language learners and enrolled in the required bilingual education or English as a second language program within 20 school days of the start of the school year in the fall.



**§89.1230. Eligible Students with Disabilities.**

- (a) School districts shall implement assessment procedures that differentiate between language proficiency and handicapping conditions in accordance with Subchapter AA of this chapter (relating to Commissioner's Rules Concerning Special Education Services) and shall establish placement procedures that ensure that placement in a bilingual education or English as a second language program is not refused solely because the student has a disability.
- (b) Admission, review, and dismissal committee members shall meet in conjunction with language proficiency assessment committee members to review the educational needs of each English language learner who qualifies for services in the special education program.

*Source: The provisions of this §89.1230 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective March 5, 1999, 24 TexReg 1383; amended to be effective May 28, 2012, 37 TexReg 3822.*

## LPAC Meeting

### MEMBERSHIP



#### **§89. 1220. Language Proficiency Assessment Committee.**

- (a) School districts shall by local board policy establish and operate a language proficiency assessment committee. The school district shall have on file policy and procedures for the selection, appointment, and training of members of the language proficiency assessment committee(s).
- (b) In school districts required to provide a bilingual education program, the language proficiency assessment committee shall be composed of the membership described in the Texas Education Code (TEC), §29.063. If the school district does not have an individual in one or more of the school job classifications required, the school district shall designate another professional staff member to serve on the language proficiency assessment committee. The school district may add other members to the committee in any of the required categories.
- (c) In school districts and grade levels not required to provide a bilingual education program, the language proficiency assessment committee shall be composed of one or more professional personnel, a campus administrator, and a parent of an English language learner participating in the program designated by the school district.
- (d) No parent serving on the language proficiency assessment committee shall be an employee of the school district.
- (e) A school district shall establish and operate a sufficient number of language proficiency assessment committees to enable them to discharge their duties within 20 school days of the enrollment of English language learners.
- (f) All members of the language proficiency assessment committee, including parents, shall be acting for the school district and shall observe all laws and rules governing confidentiality of information concerning individual students. The school district shall be responsible for the orientation and training of all members, including the parents, of the language proficiency assessment committee.

*Source: The provisions of this §89.1220 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective March 5, 1999, 24 TexReg 1383; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective September 17, 2007, 32 TexReg 6311; amended to be effective May 28, 2012, 37 TexReg 3822.*

## Responsibilities



### §89.1220. Language Proficiency Assessment Committee.

- (g) Upon their initial enrollment and at the end of each school year, the language proficiency assessment committee shall review all pertinent information on all English language learners identified in accordance with §89.1225(f) of this title (relating to Testing and Classification of Students), and shall:
  - (1) designate the language proficiency level of each English language learner in accordance with the guidelines issued pursuant to §89.1210(b) and (e) of this title (relating to Program Content and Design);
  - (2) designate the level of academic achievement of each English language learner;
  - (3) designate, subject to parental approval, the initial instructional placement of each English language learner in the required program;
  - (4) facilitate the participation of English language learners in other special programs for which they are eligible provided by the school district with either state or federal funds; and
  - (5) classify students as English proficient in accordance with the criteria described in §89.1225(h) of this title, and recommend their exit from the bilingual education or English as a second language program.
- (h) Before the administration of the state criterion-referenced test each year, the language proficiency assessment committee shall determine the appropriate assessment option for each English language learner as outlined in Chapter 101, Subchapter AA, of this title (relating to Commissioner's Rules Concerning the Participation of English Language Learners in State Assessments).
- (i) The language proficiency assessment committee shall give written notice to the student's parent advising that the student has been classified as an English language learner and requesting approval to place the student in the required bilingual education or English as a second language program. The notice shall include information about the benefits of the bilingual education or English as a second language program for which the student has been recommended and that it is an integral part of the school program.
- (j) Pending parent approval of an English language learner's entry into the bilingual education or English as a second language program recommended by the language proficiency assessment committee, the school district shall place the student in the recommended program, but may count only English language learners with parental approval for the bilingual education allotment.
- (k) The language proficiency assessment committee shall monitor the academic progress of each student who has exited from a bilingual or English as a second language program during the first two years after exiting in accordance with the TEC, §29.0561.

- (l) The student's record shall contain documentation of all actions impacting the English language learner.
  - (1) Documentation shall include:
    - (A) the identification of the student as an English language learner;
    - (B) the designation of the student's level of language proficiency;
    - (C) the recommendation of program placement;
    - (D) parental approval of entry or placement into the program;
    - (E) the dates of entry into, and placement within, the program;
    - (F) assessment information as outlined in Chapter 101, Subchapter AA, of this title;
    - (G) additional instructional interventions provided to students to ensure adequate yearly progress;
    - (H) the date of exit from the program and parental approval; and
    - (I) the results of monitoring for academic success, including students formerly classified as English language learners, as required under the TEC, §29.063(c)(4).
  - (2) Current documentation as described in paragraph (1) of this subsection shall be forwarded in the same manner as other student records to another school district in which the student enrolls.
- (m) A school district may identify, exit, or place a student in a program without written approval of the student's parent or guardian if:
  - (1) the student is 18 years of age or has had the disabilities of minority removed;
  - (2) reasonable attempts to inform and obtain permission from a parent or guardian have been made and documented;
  - (3) approval is obtained from:
    - (A) an adult who the school district recognizes as standing in parental relation to the student, including a foster parent or employee of a state or local governmental agency with temporary possession or control of the student; or
    - (B) the student, if no parent, guardian, or other responsible adult is available; or
  - (4) a parent or guardian has not objected in writing to the proposed entry, exit, or placement.

*Source: The provisions of this §89.1220 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective March 5, 1999, 24 TexReg 1383; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective September 17, 2007, 32 TexReg 6311; amended to be effective May 28, 2012, 37 TexReg 3822.*

## Parental Notification



### **§89.1240. Parental Authority and Responsibility.**

- (a) The parents shall be notified that their child has been classified as an English language learner and recommended for placement in the required bilingual education or English as a second language program. They shall be provided information describing the bilingual education or English as a second language program recommended, its benefits to the student, and its being an integral part of the school program to ensure that the parents understand the purposes and content of the program. The entry or placement of a student in the bilingual education or English as a second language program must be approved in writing by the student's parent. The parent's approval shall be considered valid for the student's continued participation in the required bilingual education or English as a second language program until the student meets the exit criteria described in §89.1225(h) of this title (relating to Testing and Classification of Students), graduates from high school, or the parent requests a change in program placement.
- (b) The school district shall notify the student's parent of the student's reclassification as English proficient and his or her exit from the bilingual education or English as a second language program and acquire approval as required under the Texas Education Code, §29.056(a). Students meeting exit requirements may continue in the bilingual education or English as a second language program with parental approval but are not eligible for inclusion in the school district bilingual education allotment.
- (c) The parent of a student enrolled in a school district that is required to offer bilingual education or English as a second language programs may appeal to the commissioner of education if the school district fails to comply with the law or the rules. Appeals shall be filed in accordance with Chapter 157 of this title (relating to Hearings and Appeals).

*Source: The provisions of this §89.1240 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective May 28, 2012, 37 TexReg 3822.*

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### **§89.1233. Participation of English Proficient Students.**

School districts may enroll students who are not English language learners in the bilingual education program in accordance with the Texas Education Code, §29.058.

*Source: The provisions of this §89.1233 adopted to be effective March 5, 1999, 24 TexReg 1383 amended to be effective May 28, 2012, 37 TexReg 3822.*

## Placement



### **§89.1205. Required Bilingual Education and English as a Second Language Programs.**

- (a) Each school district that has an enrollment of 20 or more English language learners in any language classification in the same grade level district-wide shall offer a bilingual education program as described in subsection (b) of this section for the English language learners in prekindergarten through the elementary grades who speak that language. "Elementary grades" shall include at least prekindergarten through Grade 5; sixth grade shall be included when clustered with elementary grades.
- (b) A school district shall provide a bilingual education program by offering dual language instruction in prekindergarten through the elementary grades, using one of the four bilingual program models described in §89.1210 of this title (relating to Program Content and Design).
- (c) School districts are authorized to establish a bilingual education program at grade levels in which the bilingual education program is not required under subsection (a) of this section.
- (d) All English language learners for whom a school district is not required to offer a bilingual education program shall be provided an English as a second language program as described in subsection (e) of this section, regardless of the students' grade levels and home language, and regardless of the number of such students.
- (e) A school district shall provide English as a second language instruction by offering an English as a second language program using one of the two models described in §89.1210 of this title.
- (f) School districts may join with other school districts to provide bilingual education or English as a second language programs.

*Source: The provisions of this §89.1205 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective March 5, 1999, 24 TexReg 1383; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective September 17, 2007, 32 TexReg 6311; amended to be effective May 28, 2012, 37 TexReg 3822.*



### **§89.1210. Program Content and Design.**

- (a) Each school district required to offer a bilingual education or English as a second language program shall provide each English language learner the opportunity to be enrolled in the required program at his or her grade level. Each student's level of proficiency shall be designated by the language proficiency assessment committee in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee). The school district shall modify the instruction, pacing, and materials to ensure that English language learners have a full opportunity to master the essential knowledge and skills of the required curriculum. Students participating in the bilingual education program may demonstrate their mastery of the essential knowledge and skills in either their home language or in English for each content area.
- (b) The bilingual education program shall be a full-time program of instruction in which both the students' home language and English shall be used for instruction. The amount of instruction

in each language within the bilingual education program shall be commensurate with the students' level of proficiency in each language and their level of academic achievement. The students' level of language proficiency and academic achievement shall be designated by the language proficiency assessment committee. The Texas Education Agency (TEA) shall develop program guidelines to ensure that the programs are developmentally appropriate, that the instruction in each language is appropriate, and that the students are challenged to perform at a level commensurate with their linguistic proficiency and academic potential.

- (c) The bilingual education program shall be an integral part of the regular educational program required under Chapter 74 of this title (relating to Curriculum Requirements). In bilingual education programs using Spanish and English as languages of instruction, school districts shall use state-adopted English and Spanish instructional materials and supplementary materials as curriculum tools to enhance the learning process; in addition, school districts may use other curriculum adaptations that have been developed. The bilingual education program shall address the affective, linguistic, and cognitive needs of English language learners as follows.
  - (1) Affective. English language learners shall be provided instruction in their home language to introduce basic concepts of the school environment, and instruction both in their home language and in English, which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall address the history and cultural heritage associated with both the students' home language and the United States.
  - (2) Linguistic. English language learners shall be provided instruction in the skills of listening, speaking, reading, and writing both in their home language and in English. The instruction in both languages shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills in all subjects.
  - (3) Cognitive. English language learners shall be provided instruction in language arts, mathematics, science, and social studies both in their home language and in English. The content area instruction in both languages shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills in all subjects.
- (d) The bilingual education program shall be implemented with consideration for each English language learner's unique readiness level through one of the following program models.
  - (1) Transitional bilingual/early exit is a bilingual program model that serves a student identified as limited English proficient in both English and Spanish, or another language, and transfers the student to English-only instruction. This model provides instruction in literacy and academic content areas through the medium of the student's first language, along with instruction in English oral and academic language development. Non-academic subjects such as art, music, and physical education may also be taught in English. Exiting of a student to an all-English program of instruction will occur no earlier than the end of Grade 1 or, if the student enrolls in school during or after Grade 1, no earlier than two years or later than five years after the student enrolls in school. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title (relating to Testing and Classification of Students) may continue receiving services, but the school district will not receive the bilingual education allotment for that student.

- (2) Transitional bilingual/late exit is a bilingual program model that serves a student identified as limited English proficient in both English and Spanish, or another language, and transfers the student to English-only instruction. Academic growth is accelerated through cognitively challenging academic work in the student's first language along with meaningful academic content taught through the student's second language, English. The goal is to promote high levels of academic achievement and full academic language proficiency in the student's first language and English. A student enrolled in a transitional bilingual/late exit program is eligible to exit the program no earlier than six years or later than seven years after the student enrolls in school. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student.
- (3) Dual language immersion/two-way is a biliteracy program model that integrates students proficient in English and students identified as limited English proficient. This model provides instruction in both English and Spanish, or another language, and transfers a student identified as limited English proficient to English-only instruction. Instruction is provided to both native English speakers and native speakers of another language in an instructional setting where language learning is integrated with content instruction. Academic subjects are taught to all students through both English and the other language. Program exit will occur no earlier than six years or later than seven years after the student enrolls in school. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student. The primary goals of a dual language immersion program model are:
  - (A) the development of fluency and literacy in English and another language for all students, with special attention given to English language learners participating in the program;
  - (B) the integration of English speakers and English language learners for academic instruction, in accordance with the program design and model selected by the school district board of trustees. Whenever possible, 50% of the students in a program should be dominant English speakers and 50% of the students should be native speakers of the other language at the beginning of the program; and
  - (C) the promotion of bilingualism, biliteracy, cross-cultural awareness, and high academic achievement.



- (4) Dual language immersion/one-way is a biliteracy program model that serves only students identified as limited English proficient. This model provides instruction in both English and Spanish, or another language, and transfers a student to English-only instruction. Instruction is provided to English language learners in an instructional setting where language learning is integrated with content instruction. Academic subjects are taught to all students through both English and the other language. Program exit will occur no earlier than six years or later than seven years after the student enrolls in school. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student. The primary goals of a dual language immersion program model are:
- (A) the development of fluency and literacy in English and another language for all students, with special attention given to English language learners participating in the program;
  - (B) the integration of English speakers and English language learners for academic instruction, in accordance with the program design and model selected by the school district board of trustees; and
  - (C) the promotion of bilingualism, biliteracy, cross-cultural awareness, and high academic achievement.
- (e) English as a second language programs shall be intensive programs of instruction designed to develop proficiency in listening, speaking, reading, and writing in the English language. Instruction in English as a second language shall be commensurate with the student's level of English proficiency and his or her level of academic achievement. In prekindergarten through Grade 8, instruction in English as a second language may vary from the amount of time accorded to instruction in English language arts in the general education program for English proficient students to a full-time instructional setting using second language methods. In high school, the English as a second language program shall be consistent with graduation requirements under Chapter 74 of this title. The language proficiency assessment committee may recommend appropriate services that may include content courses provided through sheltered instructional approaches by trained teachers, enrollment in English as a second language courses, additional state elective English courses, and special assistance provided through locally determined programs.
- (f) The English as a second language program shall be an integral part of the regular educational program required under Chapter 74 of this title. School districts shall use state-adopted English as a second language instructional materials and supplementary materials as curriculum tools. In addition, school districts may use other curriculum adaptations that have been developed. The school district shall provide for ongoing coordination between the English as a second language program and the regular educational program. The English as a second language program shall address the affective, linguistic, and cognitive needs of English language learners as follows.
- (1) Affective. English language learners shall be provided instruction using second language methods in English to introduce basic concepts of the school environment, which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall address the history and cultural heritage associated with both the students' home language and the United States.

- (2) Linguistic. English language learners shall be provided intensive instruction to develop proficiency in listening, speaking, reading, and writing in the English language. The instruction in academic content areas shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills.
  - (3) Cognitive. English language learners shall be provided instruction in English in language arts, mathematics, science, and social studies using second language methods. The instruction in academic content areas shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills.
- (g) The English as a second language program shall be implemented with consideration for each English language learner's unique readiness level through one of the following program models.
- (1) An English as a second language/content-based program model is an English program that serves only students identified as English language learners by providing a full-time teacher certified under the Texas Education Code (TEC), §29.061(c), to provide supplementary instruction for all content area instruction. The program integrates English as a second language instruction with subject matter instruction that focuses not only on learning a second language, but using that language as a medium to learn mathematics, science, social studies, or other academic subjects. Exiting of a student to an all-English program of instruction without English as a second language support will occur no earlier than the end of Grade 1 or, if the student enrolls in school during or after Grade 1, no earlier than two years or later than five years after the student enrolls in school. At the high school level, the English language learner receives sheltered instruction in all content areas. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student.
  - (2) An English as a second language/pull-out program model is an English program that serves only students identified as English language learners by providing a part-time teacher certified under the TEC, §29.061(c), to provide English language arts instruction exclusively, while the student remains in a mainstream instructional arrangement in the remaining content areas. Instruction may be provided by the English as a second language teacher in a pull-out or inclusionary delivery model. Exiting of a student to an all-English program of instruction without English as a second language support will occur no earlier than the end of Grade 1 or, if the student enrolls in school during or after Grade 1, no earlier than two years or later than five years after the student enrolls in school. At the high school level, the English language learner receives sheltered instruction in all content areas. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student.
- (h) Except in the courses specified in subsection (i) of this section, English as a second language strategies, which may involve the use of the students' home language, may be provided in any of the courses or electives required for promotion or graduation to assist the English language learners to master the essential knowledge and skills for the required subject(s). The use of English as a second language strategies shall not impede the awarding of credit toward meeting promotion or graduation requirements.

- (i) In subjects such as art, music, and physical education, the English language learners shall participate with their English-speaking peers in regular classes provided in the subjects. The school district shall ensure that students enrolled in bilingual education and English as a second language programs have a meaningful opportunity to participate with other students in all extracurricular activities.
- (j) The required bilingual education or English as a second language programs shall be provided to every English language learner with parental approval until such time that the student meets exit criteria as described in §89.1225(h) of this title or graduates from high school.

*Source: The provisions of this §89.1210 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective March 5, 1999, 24 TexReg 1383; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective May 28, 2012, 37 TexReg 3822.*

## Annual Review for Exit/Reclassification



### §89.1225. Testing and Classification of Students.

- (h) For exit from a bilingual education or English as a second language program, a student may be classified as English proficient at the end of the school year in which a student would be able to participate equally in a general education, all-English instructional program. This determination shall be based upon all of the following:
- (1) TEA-approved tests that measure the extent to which the student has developed oral and written language proficiency and specific language skills in English;
  - (2) satisfactory performance on the reading assessment instrument under the Texas Education Code (TEC), §39.023(a), or a TEA-approved English language arts assessment instrument administered in English, or a score at or above the 40th percentile on both the English reading and the English language arts sections of a TEA-approved norm-referenced standardized achievement instrument for a student who is enrolled in Grade 1 or 2; and
  - (3) TEA-approved criterion-referenced written tests when available, or other TEA-approved tests when criterion-referenced tests are not available, and the results of a subjective teacher evaluation.
- (i) A student may not be exited from the bilingual education or English as a second language program in prekindergarten or kindergarten. A school district must ensure that English language learners are prepared to meet academic standards required by the TEC, §28.0211.
- (j) For determining whether a student who has been exited from a bilingual education or English as a second language program is academically successful, the following criteria shall be used at the end of the school year:
- (1) the student meets state performance standards in English on the criterion-referenced assessment instrument required in the TEC, §39.023, for the grade level as applicable; and
  - (2) the student has passing grades in all subjects and courses taken.
- (k) The ARD committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and performance standard requirement for exit under subsection (h) of this section for students for whom those tests would be inappropriate as part of the IEP. The decision to exit a student who receives both special education and special language services from the bilingual education or English as a second language program is determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with applicable provisions of subsection (h) of this section.
- (l) Notwithstanding §101.101 of this title (relating to Group-Administered Tests), all tests used for the purpose of identification, exit, and placement of students and approved by the TEA must be re-normed at least every eight years.

*Source: The provisions of this §89.1225 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective September 17, 2007, 32 TexReg 6311; amended to be effective May 28, 2012, 37 TexReg 3822.*

**2016-2017 English Proficiency Exit Criteria Chart**

At the end of the school year, a district may transfer (exit, reclassify, transition) an English language learner (ELL) out of a bilingual or ESL education program for the first time or a subsequent time if the student is able to participate equally in a regular all-English instruction program as determined by satisfactory performance in all three assessment areas below and the results of a subjective teacher evaluation.<sup>1</sup>

For State of Texas Assessments of Academic Readiness (STAAR) English reading and English writing, the performance level for program exit is Level II (Satisfactory Academic Performance) or above.

	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11 <sup>th</sup> /12 <sup>th</sup>
<b>Current School Year Oral = Listening &amp; Speaking</b>	Scored Fluent on English OLPT <sup>2</sup>	Scored Fluent on English OLPT <sup>2</sup>	Scored Fluent on English OLPT <sup>2</sup>	Scored Fluent on English OLPT <sup>2</sup>	Scored Fluent on English OLPT <sup>2</sup>	Scored Fluent on English OLPT <sup>2</sup>	Scored Fluent on English OLPT <sup>2</sup>	Scored Fluent on English OLPT <sup>2</sup>	Scored Fluent on English OLPT <sup>2</sup>	Scored Fluent on English OLPT <sup>2</sup>	Scored Fluent on English OLPT <sup>2</sup>
<b>English Reading<sup>3</sup></b>	Norm-Referenced Standardized Achievement Test <sup>2</sup> (Rdg./Lang.) 40th percentile or above	Norm-Referenced Standardized Achievement Test <sup>2</sup> (Rdg./Lang.) 40th percentile or above	STAAR <sup>3</sup>	STAAR <sup>3</sup>	STAAR <sup>3</sup>	STAAR <sup>3</sup>	STAAR <sup>3</sup>	STAAR <sup>3</sup>	STAAR <sup>3</sup>	STAAR <sup>3</sup>	Norm-Referenced Standardized Achievement Test <sup>2</sup> (Rdg./Lang.) 40th percentile or above
<b>English Writing<sup>3</sup></b>	Agency-Approved Writing Test <sup>2</sup>	Agency-Approved Writing Test <sup>2</sup>	Agency-Approved Writing Test <sup>2</sup>	STAAR <sup>3</sup>	Agency-Approved Writing Test <sup>2</sup>	Agency-Approved Writing Test <sup>2</sup>	STAAR <sup>3</sup>	Agency-Approved Writing Test <sup>2</sup>	Agency-Approved Writing Test <sup>2</sup>	Agency-Approved Writing Test <sup>2</sup>	Agency-Approved Writing Test <sup>2</sup>
<b>Subjective Teacher Evaluation</b>	Assessments, anecdotal notes, portfolios, etc.										

<sup>1</sup> 19 TAC §89.1225(h)

<sup>2</sup> The 2016–2017 List of Approved Tests for Assessment of English Language Learners is available on the following web page: <http://tea.texas.gov/bilingual/esl/education/>

<sup>3</sup> For STAAR, English reading and English writing refer to the grade-level tests in grades 3–8 and to the applicable end-of-course English I for grade 9, and English II for grade 10.

<sup>4</sup> Exception: Texas English Language Proficiency Assessment System (TELPAS) Reading and Writing Advanced High will be used for all students with the Texas Assessment of Knowledge and Skills (TAKS) as their graduation requirement under state policy.

<sup>5</sup> Includes STAAR A without linguistic accommodations.

Note: ELLs may be exited only after the end of first grade based on 19 TAC §89.1225(i).

Note: ELLs for whom the LPAC has recommended linguistic accommodations on the STAAR reading or writing test should not be considered for exit.

**Process for Considering Special Exit Criteria  
from Bilingual/English as a Second Language (ESL) Services  
Under 19 TAC §89.1225(k)<sup>1</sup>**

**2016-2017 School Year**

**Grades 1–12**

Under Texas Administrative Code (TAC) §89.1225(h), districts are required to use the exit criteria represented in the chart titled *2016-2017 English Proficiency Exit Criteria Chart* found at <http://tea.texas.gov/bilingual/esl/education/> to exit English language learners (ELLs) from bilingual or ESL programs. The exit criteria under TAC §89.1225(h) apply to the vast majority of **ELLs who receive special education services**. In rare cases, an ELL receiving special education services may qualify to be exited using criteria permitted under TAC §89.1225(k), which give special consideration to an ELL for whom assessments and/or standards under TAC §89.1225(h) are not appropriate because of the nature of a student's particular disabling condition. Students considered for special exit criteria under TAC §89.1225(k) should only be only those designated to take STAAR Alternate 2, as determined by the ARD committee in conjunction with the LPAC.

This document outlines the process to follow when considering whether a student qualifies to exit using the criteria authorized by TAC §89.1225(k).

**Step 1: Schedule Meeting to Evaluate Whether Student Potentially Qualifies for Exit**

At or near the beginning of the school year, a meeting is to be scheduled between key admission, review, and dismissal (ARD) committee and Language Proficiency Assessment Committee (LPAC) members to discuss whether the student qualifies to exit using criteria under §TAC 89.1225(k).

- Through this process, a determination is made about the assessments and/or English language proficiency assessment standards to be used in the exiting process.
- This process applies **ONLY** when one or more assessments and/or English language proficiency assessment standards under TAC §89.1225(h) are not appropriate for the student in a particular language domain for reasons directly associated with the student's disability. In following this process, refer also to the document titled *Guidance Related to ARD Committee and LPAC Collaboration* found at <http://tea.texas.gov/index2.aspx?id=2147496923>.
- This process is to be used to address the needs of an individual student, not groups of students. Very few students qualify to exit using the TAC §89.1225(k) criteria.
- This process must be conducted by key admission, review, and dismissal (ARD) committee members (including a diagnostician when applicable) and key LPAC members who are familiar with the student's current progress and needs, including one or more teachers with in-depth knowledge of the student's second language acquisition and academic achievement.

**Step 2: Discuss Evidence of Need for Use of §89.1225(k) Exit Criteria**

At the meeting, the participants discuss the second language acquisition of the student within the context of the individual student's disability to consider whether the TAC §89.1225(k) exit criteria are warranted.

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<sup>1</sup> Title 19 Texas Administrative Code Chapter 89 Adaptations for Special Populations; Subchapter BB. Commissioner's Rules Concerning State Plan for Educating Limited English Proficient Students

- Consideration must be IEP-based and must include documented evidence that, because of the nature of the student's disability, the student is not expected to be able to attain English language proficiency in one or more domains and no longer appears to benefit from second language acquisition support in English to address second language acquisition cognitive, linguistic, and affective needs (or is expected to reach that point during the school year).
- Evidence must include both historical formal and informal assessment data and direct teacher input. Ongoing informal assessment data may come from checklists, inventories, and other formative evaluations designed to identify the levels of academic functioning and English language proficiency of the student. The input of a diagnostician may be requested, as necessary, to help determine whether the TAC §89.1225(k) exit criteria are warranted. Direct teacher input should provide further insight into the student's classroom performance and needs, and should include, if applicable, documentation of response to intervention, anecdotal notes, and other evidence drawn from sources such as classroom-based observations and classroom activities.

### **Step 3: Specify Assessments and English Language Proficiency Test Standards**

If, after reviewing the evidence, the meeting participants conclude that the student no longer benefits from second language acquisition support in English (or is expected to reach that point during the school year), the participants review the assessment information in the IEP and make exit criteria recommendations based on the information below.

**Caution should be exercised when considering exit of students in Grades 1-2. It may be premature in these grades to consider program exit due to developmental factors related to emergent language and literacy. Additionally, in early grades it is often difficult to know the effect of the student's disability on long-term prospects for second language acquisition.**

#### **ACADEMIC CONTENT ASSESSMENTS OF READING AND WRITING IN GRADES 1-2**

- Norm-referenced standardized achievement tests are not required for students in grades 1-2 eligible under TAC §89.1225(k).

#### **ACADEMIC CONTENT ASSESSMENTS OF READING AND WRITING IN GRADES 3-12**

- **Selection of appropriate academic content assessments**  
Students considered for exit criteria under TAC §89.1225(k) should be only those designated to STAAR Alternate 2, as determined by the ARD committee in conjunction with the LPAC.  
**Reminder: State-established standards must be used for all state assessments.**
- **Modification of performance standards on academic content assessments not permitted**  
STAAR Alternate 2 is an assessment based on alternate academic achievement standards. Further modification of performance standards on academic content assessments is not permitted.  
**State-established standards must be used for all state assessments.**

#### **ENGLISH LANGUAGE PROFICIENCY ASSESSMENTS IN GRADES 1-12**

- **Modification of English language proficiency assessment standards on a domain-by-domain basis**  
Any modified standards must be supported by historical data and evidence that the student is not expected to be able to attain English language proficiency because of factors directly related

to the student's disability and that the student no longer appears to benefit from second language acquisition support in English to address second language acquisition cognitive, linguistic, and affective needs (or is expected to reach that point during the school year).

- **Selection of appropriate English language proficiency assessments**
  - **Listening:** TELPAS listening or other OLPT from state-approved list
  - **Speaking:** TELPAS speaking or other OLPT from state-approved list
  - **Reading:** TELPAS reading or other English language reading proficiency test from state-approved list
  - **Writing:** TELPAS writing or other English language writing proficiency test from state-approved list

#### **Step 4: Prepare Documentation**

Key members of the ARD committee and LPAC document the evidence, recommendation, assessments, and any modified English language proficiency test standards.

#### **Step 5: Discuss Recommended Exit Criteria in Formal ARD Committee Meeting**

Key members of the ARD committee and LPAC present the documentation at a formal ARD committee meeting.

- The meeting should take place as early in the current school year as possible or at the end of the year to be applied the next school year. The meeting must occur prior to the student's participation in the identified assessments.
- Based on discussion at the formal ARD committee meeting, the IEP is updated with documentation of the modified exit criteria if the committee as a whole determines that exit is anticipated.

#### **Step 6: Determine and Document Whether Student Has Met Modified Exit Criteria**

At the end of the year, the ARD committee, with key LPAC members, meets to review the assessment results and subjective teacher evaluation required under TAC §89.1225(h) to determine whether the student has met the modified exit criteria.

- The subjective teacher evaluation must reflect the status of the student following the administration of the assessments.
- This meeting is to be held at the end of the school year, as required by TAC Section 89.1220(g). This means that an additional ARD committee meeting is necessary for students whose annual ARD committee meeting is held at a different time.
- If the decision is made to exit the student based on the assessment results and subjective teacher evaluation, the ARD committee finalizes and documents the change in placement or program and delineates instructional services including the monitoring period for exited students. Furthermore, as required under TAC §89.1220(l)(1)(H) relating to exit from bilingual education or ESL services, the LPAC also documents the exit decision in the student's permanent record file.



## Required Summer School Programs



### §89.1250. Required Summer School Programs.

Summer school programs that are provided under the Texas Education Code (TEC), §29.060, for English language learners who will be eligible for admission to kindergarten or Grade 1 at the beginning of the next school year shall be implemented in accordance with this section.

- (1) Purpose of summer school programs.
  - (A) English language learners shall have an opportunity to receive special instruction designed to prepare them to be successful in kindergarten and Grade 1.
  - (B) Instruction shall focus on language development and essential knowledge and skills appropriate to the level of the student.
  - (C) The program shall address the affective, linguistic, and cognitive needs of the English language learners in accordance with §89.1210(c) and (f) of this title (relating to Program Content and Design).
- (2) Establishment of, and eligibility for, the program.
  - (A) Each school district required to offer a bilingual or English as a second language (ESL) program in accordance with the TEC, §29.053, shall offer the summer program.
  - (B) To be eligible for enrollment:
    - (i) a student must be eligible for admission to kindergarten or to Grade 1 at the beginning of the next school year and must be an English language learner; and
    - (ii) a parent or guardian must have approved placement of the English language learner in the required bilingual or ESL program following the procedures described in §89.1220(g) of this title (relating to Language Proficiency Assessment Committee) and §89.1225(a)-(f) of this title (relating to Testing and Classification of Students).
  - (C) Limited English proficiency shall be determined by evaluating students using an oral language proficiency test approved by the Texas Education Agency.
- (3) Operation of the program.
  - (A) Enrollment is optional.
  - (B) The program shall be operated on a one-half day basis, a minimum of three hours each day, for eight weeks or the equivalent of 120 hours of instruction.
  - (C) The student/teacher ratio for the program district-wide shall not exceed 18 to one.
  - (D) A school district is not required to provide transportation for the summer program.

- (E) Teachers shall possess certification or endorsement as required in the TEC, §29.061, and §89.1245 of this title (relating to Staffing and Staff Development).
  - (F) Reporting of student progress shall be determined by the board of trustees. A summary of student progress shall be provided to parents at the conclusion of the program. This summary shall be provided to the student's teacher at the beginning of the next regular school term.
  - (G) A school district may join with other school districts in cooperative efforts to plan and implement programs.
  - (H) The summer school program shall not substitute for any other program required to be provided during the regular school term, including those required in the TEC, §29.153.
- (4) Funding and records for programs.
- (A) A school district shall use state and local funds for program purposes. School districts may use federal funds, consistent with requirements for the expenditure of federal funds, for the program.
    - (i) Available funds appropriated by the legislature for the support of summer school programs provided under the TEC, §29.060, shall be allocated to school districts in accordance with this subsection.
    - (ii) Funding for the summer school program shall be on a unit basis in such an allocation system to ensure a pupil/teacher ratio of not more than 18 to one. The numbers of students required to earn units shall be established by the commissioner. The allotment per unit shall be determined by the commissioner based on funds available.
    - (iii) Any school district required to offer the program under paragraph (2)(A) of this subsection that has less than ten students district-wide desiring to participate is not required to operate the program. However, those school districts must demonstrate that they have aggressively attempted to encourage student participation.
    - (iv) Payment to school districts for summer school programs shall be based on units employed. This information must be submitted in a manner and according to a schedule established by the commissioner in order for a school district to be eligible for funding.
  - (B) A school district shall maintain records of eligibility, attendance, and progress of students.

*Source: The provisions of this §89.1250 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective February 17, 2005, 30 TexReg 709; amended to be effective September 17, 2007, 32 TexReg 6311; amended to be effective May 28, 2012, 37 TexReg 3822.*

## Program Evaluation



### §89.1265. Evaluation.

- (a) All school districts required to conduct a bilingual education or English as a second language program shall conduct periodic assessment in the languages of instruction to determine program impact and student outcomes in all subject areas.
- (b) Annual reports of educational performance shall reflect the academic progress in either language of the English language learners, the extent to which they are becoming proficient in English, the number of students who have been exited from the bilingual education and English as a second language programs, and the number of teachers and aides trained and the frequency, scope, and results of the training. These reports shall be retained at the district level.
- (c) School districts shall report to parents the progress of their child as a result of participation in the program offered to English language learners in English and the home language at least annually.
- (d) Each school year, the principal of each school campus, with the assistance of the campus level committee, shall develop, review, and revise the campus improvement plan described in the Texas Education Code, §11.253, for the purpose of improving student performance for English language learners.

*Source: The provisions of this §89.1265 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective May 28, 2012, 37 TexReg 3822.*



### §89.1267. Standards for Evaluation of Dual Language Immersion Program Models.

- (a) A school district implementing a dual language immersion program must conduct annual formative and summative evaluations collecting a full range of data to determine program impact on student academic success.
- (b) The success of a dual language immersion program is evident by students in the program demonstrating high levels of language proficiency in English and the other language and mastery of the Texas essential knowledge and skills for the foundation and enrichment areas. Indicators of success may include scores on statewide student assessments in English, statewide student assessments in Spanish (if appropriate), norm-referenced standardized achievement tests in both languages, and/or language proficiency tests in both languages.

*Source: The provisions of this §89.1267 adopted to be effective May 28, 2012, 37 TexReg 3822.*



§89.1269. General Standards for Recognition of Dual Language Immersion Program Models.

- (a) School district recognition. An exceptional dual language immersion program model may be recognized by the local school district board of trustees using the following criteria.
  - (1) A school district must exceed the minimum requirements stated in §89.1227 of this title (relating to Minimum Requirements for Dual Language Immersion Program Model).
  - (2) A school district must not receive the lowest performance rating in the state accountability system.
  - (3) A school district must not be identified for any stage of intervention for the district's bilingual and/or English as a second language program under the performance-based monitoring system.
  - (4) A school district must meet the adequate yearly progress participation and performance criteria in reading and mathematics for the English language learner student group under Elementary and Secondary Education Act (ESEA) regulations.
- (b) Student recognition. A student participating in a dual language immersion program model may be recognized by the program and its local school district board of trustees using the following criteria.
  - (1) The student must meet or exceed statewide student assessment passing standards, as required by the Texas Education Code, §39.024, in all subject areas at the appropriate grade level.
  - (2) The student must meet or exceed expected levels of language proficiency on a recognized language proficiency test from the list of tests approved by the commissioner of education.

*Source: The provisions of this §89.1269 adopted to be effective May 28, 2012, 37 TexReg 3822.*