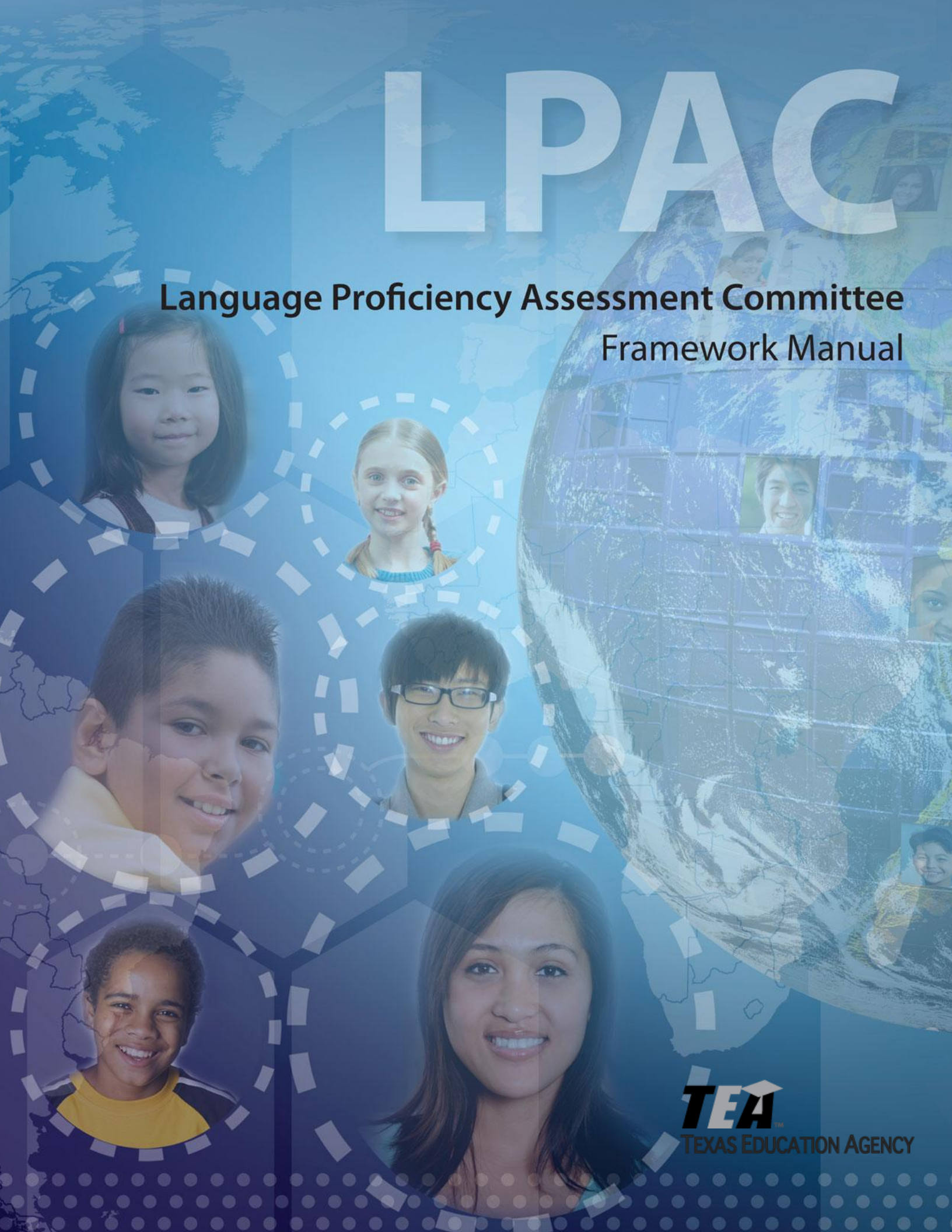


# LPAC

## 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 Limited English Proficient Students 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 limited English proficient (LEP) students 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 2011-2012*** 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 Limited English Proficient (LEP) students. 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 Limited Proficient Students. As an advocate for the LEP student, 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 2011-2012 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.
- 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 2011-2012 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 Limited English Proficient (LEP) student 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 at:

<http://portal.esc20.net/portal/page/portal/esc20public/bilesi/LPACFramework>

**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 *Civil Rights Act: Title VI* prohibits discrimination on the basis of race, color, or national origin in the operation of all federally assisted programs.
- 1968 *The Bilingual Education Act, Title VII of the Elementary and Secondary Education Act of 1968*: 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 *Title VII* 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 *Title VII* 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 *Title VII* 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 *Title VII*, and created fellowship programs for professional training.
- 1994 Comprehensive educational reforms entail reconfiguration of *Title VII* 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 limited English proficient students by assisting children to learn English and meet challenging state academic content and student academic achievement standards. Legislation for limited English proficient students 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.

**Texas Administrative Code (TAC)  
Commissioner's Rules (TAC Chapter 89)**

<http://ritter.tea.state.tx.us/rules/tac/chapter089/ch089bb.html>

## **Chapter 89. Adaptations for Special Populations Subchapter BB. Commissioner's Rules Concerning State Plan for Educating Limited English Proficient Students**

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**Statutory Authority: The provisions of this Subchapter BB issued under the Texas Education Code, §§29.051, 29.054, 29.056, 29.0561, and 29.060, 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 limited English proficient shall be provided a full opportunity to participate in a bilingual education or English as a second language program, as required in the Texas Education Code, Chapter 29, Subchapter B. To ensure equal educational opportunity, as required in the Texas Education Code, §1.002(a), each school district shall:

- (1) identify limited English proficient students based on criteria established by the state;
- (2) provide bilingual education and English as a second language programs as integral parts of the regular program as described in the Texas Education Code, §4.002;
- (3) seek certified teaching personnel to ensure that limited English proficient students are afforded full opportunity to master the essential skills and knowledge required by the state; and
- (4) assess achievement for essential skills and knowledge in accordance with the Texas Education Code, Chapter 39, to ensure accountability for limited English proficient students and the schools that serve them.

(b) The goal of bilingual education programs shall be to enable limited English proficient students to become competent in the comprehension, speaking, reading, and composition of 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 limited English proficient students to participate equitably in school.

(c) The goal of English as a second language programs shall be to enable limited English proficient students to become competent in the comprehension, speaking, reading, and composition of the English language through the integrated use of second language methods. The English as a second language 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 limited English proficient students to participate equitably in school.

(d) Bilingual education and English as a second language programs shall be integral parts of the total school program. Such programs shall use instructional approaches designed to meet the special needs of limited English proficient students. The basic curriculum content of the programs shall be based on the essential skills and knowledge required by the state.

*Source: The provisions of this §89.1201 adopted to be effective September 1, 1996, 21 TexReg 5700.*

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

(a) Each school district which has an enrollment of 20 or more limited English proficient students 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 limited English proficient students 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 district shall provide a bilingual education program by offering a dual language program in prekindergarten through the elementary grades, as described in §89.1210 of this title (relating to Program Content and Design).

(c) 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 limited English proficient students for whom a 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 languages, and regardless of the number of such students.

(e) A district shall provide an English as a second language program by offering an English as a second language program as described in §89.1210 of this title (relating to Program Content and Design).

(f) Districts may join with other 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*

**§89.1207. Exceptions and Waivers.**

(a) Bilingual education program.

(1) Exceptions. A 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 October 1 and shall include:

(A) a statement of the reasons the 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 limited English proficient students, 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 assurance that certified teachers available in the 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 limited English proficient students with beginning levels of English proficiency are served on a priority basis;

(D) a description of the training program which the 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 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 of education if the requesting district:

(A) meets or exceeds the state average for limited English proficient student 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 district denied a bilingual education program exception must submit to the commissioner of education a detailed action plan for complying with required regulations for the following school year.

(4) Appeals. A 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 TEC, §39.075, if a 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 limited English proficient student 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, §39.131.

(b) English as a second language program.

(1) Waivers. A 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 of education a waiver of the certification requirements for each teacher who will provide instruction in English as a second language for limited English proficient students. 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 October 1 and shall include:

(A) a statement of the reasons the 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 limited English proficient students, 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 district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels in the elementary school campus, and on the basis of need for secondary campuses, to ensure that the linguistic and academic needs of the limited English proficient students 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 estimated date for the completion of the English as a second language supplemental certification for each teacher under a waiver, which must be completed by the end of the school year for which the waiver was requested;

(E) a description of the training program which the 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 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 of education if the requesting district:

(A) meets or exceeds the state average for limited English proficient student performance on the required state assessments; or

(B) meets the requirements and measurable targets of the action plan described in paragraph (1)(D) of this subsection submitted the previous year and approved by the TEA.

(3) Denial of waivers. A district denied an English as a second language program waiver must submit to the commissioner of education a detailed action plan for complying with required regulations for the following school year.

(4) Appeals. A 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, §39.075, if a 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 limited English proficient student 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, §39.131.

*Source: The provisions of this §89.1207 adopted to be effective September 17, 2007, 32 TexReg 6311.*

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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 limited English proficient student 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 district shall modify the instruction, pacing, and materials to ensure that limited English proficient students 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, districts shall use state-adopted English and Spanish instructional materials and supplementary materials as curriculum tools to enhance the learning process; in addition, districts may use other curriculum adaptations which have been developed. The bilingual education program shall address the affective, linguistic, and cognitive needs of limited English proficient students as follows.

(1) Affective. Limited English proficient students 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. Limited English proficient students shall be provided instruction in the skills of comprehension, speaking, reading, and composition 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. Limited English proficient students shall be provided instruction in mathematics, science, health, 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) English as a second language programs shall be intensive programs of instruction designed to develop proficiency in the comprehension, speaking, reading, and composition 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 regular program for nonlimited English proficient students to a full-time instructional setting utilizing 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 (relating to Curriculum Requirements). 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.

(e) The English as a second language program shall be an integral part of the regular educational program required under Chapter 74 of this title (relating to Curriculum Requirements). Districts shall use state-adopted English as a second language instructional materials and supplementary materials as curriculum tools. In addition, districts may use other curriculum adaptations which have been developed. The 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 limited English proficient students as follows.

(1) Affective. Limited English proficient students 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. Limited English proficient students shall be provided intensive instruction to develop proficiency in the comprehension, speaking, reading, and composition of 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. Limited English proficient students shall be provided instruction in English in mathematics, science, health, 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.

(f) Except in the courses specified in subsection (g) 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 limited English proficient students 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.

(g) In subjects such as art, music, and physical education, the limited English proficient students shall participate with their English-speaking peers in regular classes provided in the subjects. The 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.

(h) The required bilingual education or English as a second language programs shall be provided to every limited English proficient student with parental approval until such time that the student meets exit criteria as described in §89.1225(h) of this title (relating to Testing and Classification of Students) 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.*

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**§89.1215. Home Language Survey.**

(a) Districts shall conduct only one home language survey of each student. The home language survey shall be administered to each student new to the district and to students previously enrolled who were not surveyed in the past. Districts shall require that the survey be signed by the student's parent or guardian for students in grades 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 permanent 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 (do you) speak most of the time?"

(c) Additional information may be collected by the 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 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.*

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

(a) Districts shall by local board policy establish and operate a language proficiency assessment committee. The 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 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, §29.063. If the district does not have an individual in one or more of the school job classifications required, the district shall designate another professional staff

member to serve on the language proficiency assessment committee. The district may add other members to the committee in any of the required categories.

(c) In 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 and a parent of a limited English proficient student participating in the program designated by the district.

(d) No parent serving on the language proficiency assessment committee shall be an employee of the school district.

(e) A district shall establish and operate a sufficient number of language proficiency assessment committees to enable them to discharge their duties within four weeks of the enrollment of limited English proficient students.

(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 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 limited English proficient students 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 limited English proficient student in accordance with the guidelines issued pursuant to §89.1210(b) and (d) of this title (relating to Program Content and Design);

(2) designate the level of academic achievement of each limited English proficient student;

(3) designate, subject to parental approval, the initial instructional placement of each limited English proficient student in the required program;

(4) facilitate the participation of limited English proficient students in other special programs for which they are eligible provided by the 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 (relating to Testing and Classification of Students), 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 limited English proficient student as outlined in Chapter 101, Subchapter AA, of this title (relating to Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments). The assessment options shall be:

- (1) administration of the English version criterion-referenced test;
- (2) administration of the Spanish version criterion-referenced test; or
- (3) for certain immigrant students, exemption from the criterion-referenced test.

(i) In determining the appropriate assessment option, the language proficiency assessment committee shall consider the following criteria for each student:

- (1) academic program participation (bilingual education or English as a second language) and language of instruction;
- (2) language proficiency, including literacy, in English and/or Spanish;
- (3) number of years enrolled in U.S. schools;
- (4) previous testing history;
- (5) level achieved on the state English language proficiency assessment in reading;
- (6) consecutive years of residence outside of the 50 U.S. states; and
- (7) schooling outside the U.S.

(j) The language proficiency assessment committee shall give written notice to the student's parent advising that the student has been classified as limited English proficient 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.

(k) Pending parent approval of a limited English proficient student's entry into the bilingual education or English as a second language program recommended by the language proficiency assessment committee, the district shall place the student in the recommended program, but may count only limited English proficient students with parental approval for bilingual education allotment.

(l) 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 in accordance with the Texas Education Code, §29.0561.

(m) The student's permanent record shall contain documentation of all actions impacting the limited English proficient student. This documentation shall include:

- (1) the identification of the student as limited English proficient;
- (2) the designation of the student's level of language proficiency;
- (3) the recommendation of program placement;
- (4) parental approval of entry or placement into the program;
- (5) the dates of entry into, and placement within, the program;
- (6) the dates of exemptions from the criterion-referenced test, criteria used for this determination, and additional instructional interventions provided to students to ensure adequate yearly progress;
- (7) the date of exit from the program and parent notification; and
- (8) the results of monitoring for academic success, including students formerly classified as limited English proficient, as required under the Texas Education Code, §29.063(c)(4).

*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.*

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

(a) For identifying limited English proficient students, 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 measure, or another test approved by TEA, unless the norm-referenced measure is not valid in accordance with subsection (f)(2)(C) of this section.

(b) Districts which provide a bilingual education program shall administer an oral language proficiency test in the home language of the students who are eligible for being served in the bilingual education program. If the home language of the students is Spanish, the district shall administer the Spanish version of the TEA-approved oral language proficiency test which was administered in English. If the home language of the students is other than Spanish, the district shall determine the students' 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 which shall identify a student as limited English proficient shall be established by 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 within four weeks of their enrollment. Norm-referenced assessment instruments, however, may be administered within the established norming period.

(f) For entry into a bilingual education or English as a second language program, a student shall be identified as limited English proficient using the following criteria:

(1) At prekindergarten through Grade 1, the 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) At 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 reading and language arts sections of the TEA-approved norm-referenced measure 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 assessment instrument or other test approved by 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 the four weeks of their initial enrollment in the district, students shall be identified as limited English proficient 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 limited English proficient and enrolled in the required bilingual education or English as a second language program within four weeks 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 regular, 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, §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 assessment instrument for a student who is enrolled in Grade 1 or 2; and

(3) TEA-approved criterion-referenced written tests when 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 district must ensure that limited English proficient students are prepared to meet academic standards required by 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 of the criterion-referenced assessment instrument required in the Texas Education Code, §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.

*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.*

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

(a) Districts shall implement assessment procedures which differentiate between language proficiency and handicapping conditions in accordance with Subchapter AA of this chapter (relating to Special Education Services) and shall establish placement procedures which 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) A professional member of the language proficiency assessment committee shall serve on the admission, review, and dismissal (ARD) committee of each limited English proficient student 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.*

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#### **§89.1233. Participation of Nonlimited English Proficiency Students.**

Districts may enroll students who are not limited English proficient 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.*

**§89.1235. Facilities.**

Bilingual education and English as a second language programs shall be located in the regular public schools of the district rather than in separate facilities. In order to provide the required bilingual education or English as a second language programs, districts may concentrate the programs at a limited number of schools within the district provided that the enrollment in those schools shall not exceed 60% limited English proficient students.

*Source: The provisions of this §89.1235 adopted to be effective September 1, 1996, 21 TexReg 5700.*

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

(a) The parents shall be notified that their child has been classified as limited English proficient 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 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 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 district bilingual education allotment.

(c) The parent of a student enrolled in a district which is required to offer bilingual education or English as a second language programs may appeal to the commissioner of education if the 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.*

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**§891245. 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, §29.061, concerning bilingual education and special language program teachers. Districts which 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, Subchapter Q, of this title (relating to Permits).

(b) School districts which 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 October 1 for an exception to the bilingual education program as provided in §89.1205(g) of this title (relating to Required Bilingual Education and English as a Second Language Programs) or a waiver of the certification requirements in the English as a second language program as provided in §89.1205(h) of this title (relating to Required Bilingual Education and English as a Second Language Programs) 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 Texas Education Code, §42.153.

(d) 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) Districts which 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 the instruction in the alternative bilingual education program, who provide instruction in English as a second language, and/or who provide content area instruction in special classes for limited English proficient students.

(f) The commissioner of education shall encourage 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 §89.1210(e)(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 §89.1210(e)(2) of this title (relating to Program Content and Design);

(4) cognitively appropriate programs for limited English proficient students in accordance with §89.1210(c)(3) and §89.1210(e)(3) of this title (relating to Program Content and Design); and

(5) developmentally appropriate programs for gifted and talented limited English proficient students and limited English proficient students with handicaps.

*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.*

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

Summer school programs that are provided under the Texas Education Code, §29.060, for children of limited English proficiency who will be eligible for admission to kindergarten or first grade at the beginning of the next school year shall be implemented in accordance with this section.

(1) Purpose of summer school programs.

(A) Limited English proficient students shall have an opportunity to receive special instruction designed to prepare them to be successful in kindergarten and first grade.

(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 limited English proficient students in accordance with §89.1210(c) and §89.1210(e) of this title (relating to Program Content and Design).

(2) Establishment of, and eligibility for, the program.

(A) Each district required to offer a bilingual or special language program in accordance with the Texas Education Code, §29.053, shall offer the summer program. Programs under this subsection for students who will be in bilingual education kindergarten and first grade programs shall be bilingual education.

(B) To be eligible for enrollment, a student must be eligible for admission to kindergarten or to the first grade at the beginning of the next school year and must be limited English proficient.

(C) Limited English proficiency shall be determined by screening students using informal oral language inventories, or oral proficiency instruments approved by the commissioner of education, or other appropriate instruments.

(3) Operation of the program.

(A) Enrollment in the program is optional with the parents of the student.

(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 district is not required to provide transportation for the summer program.

(E) Teachers shall possess certification or endorsement as required in the Texas Education Code, §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 district may join with other 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 Texas Education Code, §29.153.

(4) Funding and records for programs.

(A) A district shall use state and local funds for program purposes. 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 Texas Education Code, §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 of education. The allotment per unit shall be determined by the commissioner based on funds available.

(iii) Any 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 districts must demonstrate that they have aggressively attempted to encourage student participation.

(iv) Payment to 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 of education in order for a district to be eligible for funding.

(B) A 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.*

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#### **§89.1265. Evaluation.**

(a) All districts required to conduct a bilingual education or English as a second language program shall conduct periodic assessment and continuous diagnosis 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 limited English proficient students, 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 to be made available to monitoring teams according to §89.1260 of this title (relating to Monitoring of Programs and Enforcing Law and Commissioner's Rules).

(c) Districts shall report to parents the progress of their child as a result of participation in the program offered to limited English proficient students 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 limited English proficient students.

*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.*

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**Texas Education Code, Subchapter B 29.051-29.064  
Relating to Bilingual Education and  
Special Language Programs**

<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.

(c) A teacher assigned to English as a second language or other special 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.

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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 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.

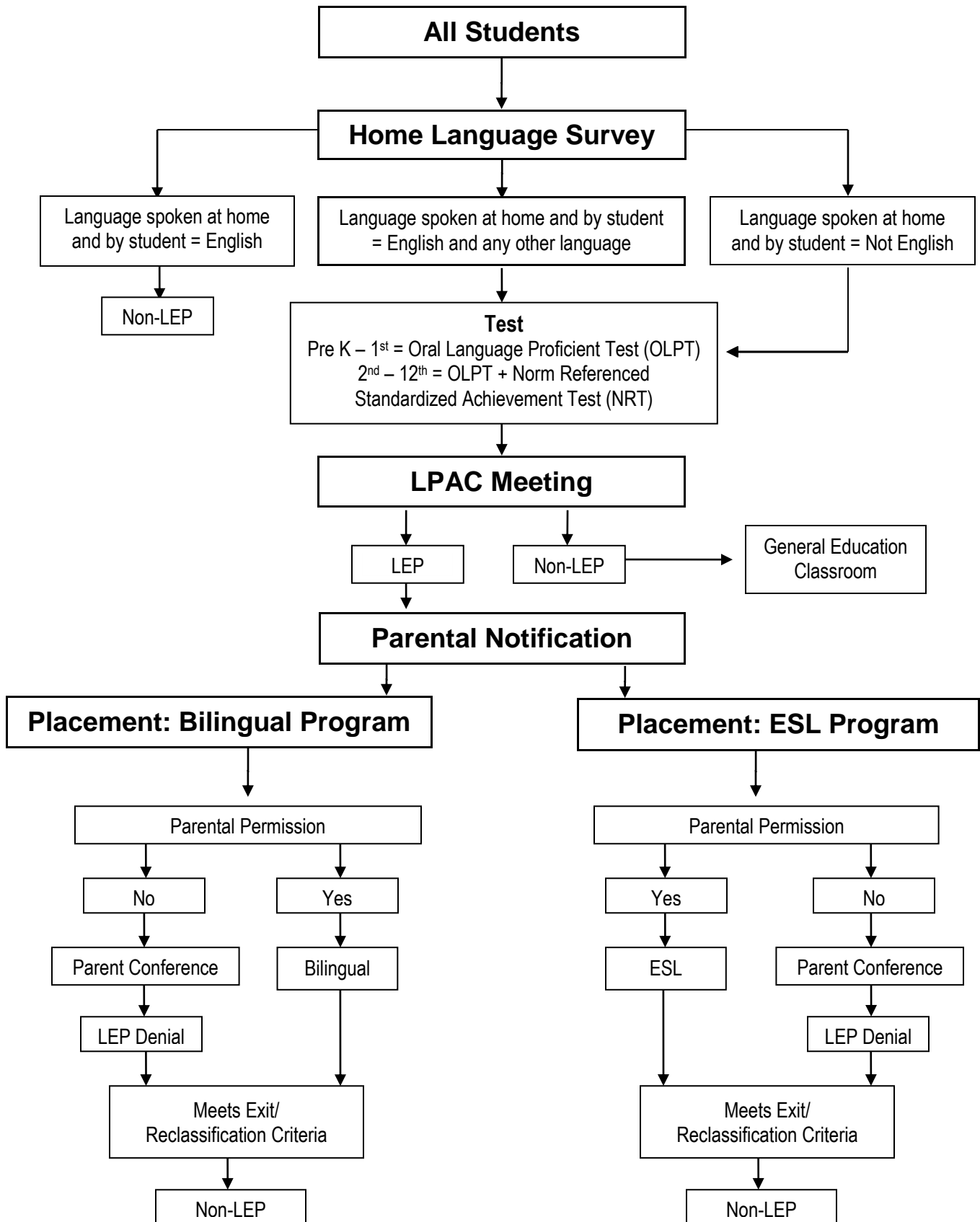
Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

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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.

# 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 limited English proficient shall be provided a full opportunity to participate in a bilingual education or English as a second language program, as required in the Texas Education Code, Chapter 29, Subchapter B. To ensure equal educational opportunity, as required in the Texas Education Code, §1.002(a), each school district shall:

- (1) identify limited English proficient students based on criteria established by the state;
- (2) provide bilingual education and English as a second language programs, as integral parts of the regular program as described in the Texas Education Code, §4.002;
- (3) seek certified teaching personnel to ensure that limited English proficient students are afforded full opportunity to master the essential skills and knowledge required by the state; and
- (4) assess achievement for essential skills and knowledge in accordance with the Texas Education Code, Chapter 39, to ensure accountability for limited English proficient students and the schools that serve them.

(b) The goal of bilingual education programs shall be to enable limited English proficient students to become competent in the comprehension, speaking, reading, and composition of 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 limited English proficient students to participate equitably in school.

(c) The goal of English as a second language programs shall be to enable limited English proficient students to become competent in the comprehension, speaking, reading, and composition of the English language through the integrated use of second language methods. The English as a second language 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 limited English proficient students to participate equitably in school.

(d) Bilingual education and English as a second language programs shall be integral parts of the total school program. Such programs shall use instructional approaches designed to meet

the special needs of limited English proficient students. The basic curriculum content of the programs shall be based on the essential skills and knowledge required by the state.

*Source: The provisions of this §89.1201 adopted to be effective September 1, 1996, 21 TexReg 5700.*

### **Compliance Statement**

#### **Title VI, Civil Rights Act of 1964; The Modified Court Order, Civil Action 5281, Federal District Court, Eastern District of Texas, Tyler Division**

Reviews of local education agencies pertaining to compliance with Title VI Civil Rights Act of 1964 and with specific requirements of the Modified Court Order, Civil Action No. 5281, Federal District Court, Eastern District of Texas, Tyler Division are conducted periodically by staff representatives of the Texas Education Agency. These reviews cover at least the following policies and practices:

- (1) acceptance policies on student transfers from other school districts;
- (2) operation of school bus routes or runs on a non-segregated basis;
- (3) nondiscrimination in extracurricular activities and the use of school facilities;
- (4) nondiscriminatory practices in the hiring, assigning, promoting, paying, demoting, reassigning, or dismissing of faculty and staff members who work with children;
- (5) enrollment and assignment of students without discrimination on the basis of race, color, or national origin;
- (6) nondiscriminatory practices relating to the use of a student's first language; and
- (7) evidence of published procedures for hearing complaints and grievances.

In addition to conducting reviews, the Texas Education Agency staff representatives check complaints of discrimination made by a citizen or citizens residing in a school district where it is alleged discriminatory practices have occurred or are occurring.

Where a violation of Title VI of the Civil Rights Act is found, the findings are reported to the Office for Civil Rights, U.S. Department of Education.

If there is a direct violation of the Court Order in Civil Action No. 5281 that cannot be cleared through negotiation, the sanctions required by the Court Order are applied.

#### **Title VII, Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972; Executive Orders 11246 and 113275; Equal Pay Act of 1964; Title IX, Education Amendments; Rehabilitation Act of 1973 as amended; 1974 Amendments to the Wage-hour Law Expanding the Age Discrimination in Employment Act of 1967;**

## **Vietnam Era Veterans Readjustment Assistance Act of 1972 as amended; Immigration Reform and Control Act of 1991.**

The Texas Education shall comply fully with the nondiscrimination provisions of all federal and state laws, rules, and regulations by assuring that no person shall be excluded from consideration for recruitment, selection, appointment, training, promotion, retention, or any other personnel action, or be denied any benefits or participation in any educational programs or activities which it operates on the grounds of race, religion, color, national origin, sex, disability, age, or veteran status (except where age, sex, or disability constitutes a bona fide occupational qualification necessary to proper and efficient administration). The Texas Education Agency is an Equal Employment Opportunity/Affirmative Action employer.

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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 district rather than in separate facilities. In order to provide the required bilingual education or English as a second language programs, districts may concentrate the programs at a limited number of schools within the district provided that the enrollment in those schools shall not exceed 60% limited English proficient students.

*Source: The provisions of this 89.1235 adopted to be effective September 1, 1996, 21 TexReg 5700.*

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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, §29.061, concerning bilingual education and special language program teachers. Districts which 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, Subchapter Q, of this title (relating to Permits).

(b) School districts which 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 October 1 for an exception to the bilingual education program as provided in §89.1205(g) of this title (relating to Required Bilingual Education and English as a Second Language Programs) or a waiver of the certification requirements in the English as a second language program as provided in §89.1205(h) of this title (relating to Required Bilingual Education and English as a Second Language Programs) 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 Texas Education Code, §42.153.

(d) 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) Districts which 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 the instruction in the alternative bilingual education program, who provide instruction in English as a second language, and/or who provide content area instruction in special classes for limited English proficient students.

(f) The commissioner of education shall encourage 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 §89.1210(e)(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 §89.1210(e)(2) of this title (relating to Program Content and Design);

(4) cognitively appropriate programs for limited English proficient students in accordance with §89.1210(c)(3) and §89.1210(e)(3) of this title (relating to Program Content and Design); and

(5) developmentally appropriate programs for gifted and talented limited English proficient students and limited English proficient students with handicaps.

*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.*

# Exceptions and Waivers



## §89.1207. Exceptions and Waivers.

### (a) Bilingual education program.

(1) Exceptions. A 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 October 1 and shall include:

(A) a statement of the reasons the 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 limited English proficient students, 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 assurance that certified teachers available in the 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 limited English proficient students with beginning levels of English proficiency are served on a priority basis;

(D) a description of the training program which the 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 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 of education if the requesting district:

(A) meets or exceeds the state average for limited English proficient student 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 district denied a bilingual education program exception must submit to the commissioner of education a detailed action plan for complying with required regulations for the following school year.

(4) Appeals. A 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 TEC, §39.075, if a 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 limited English proficient student 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, §39.131.

(b) English as a second language program.

(1) Waivers. A 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 of education a waiver of the certification requirements for each teacher who will provide instruction in English as a second language for limited English proficient students. 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 October 1 and shall include:

(A) a statement of the reasons the 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 limited English proficient students, 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 district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels in the elementary school campus, and on the basis of need for secondary campuses, to ensure that the linguistic and academic needs of the limited English proficient students 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 estimated date for the completion of the English as a second language supplemental certification for each teacher under a waiver, which must be completed by the end of the school year for which the waiver was requested;

(E) a description of the training program which the 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 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 of education if the requesting district:

(A) meets or exceeds the state average for limited English proficient student performance on the required state assessments; or

(B) meets the requirements and measurable targets of the action plan described in paragraph (1)(D) of this subsection submitted the previous year and approved by the TEA.

(3) Denial of waivers. A district denied an English as a second language program waiver must submit to the commissioner of education a detailed action plan for complying with required regulations for the following school year.

(4) Appeals. A 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, §39.075, if a district:

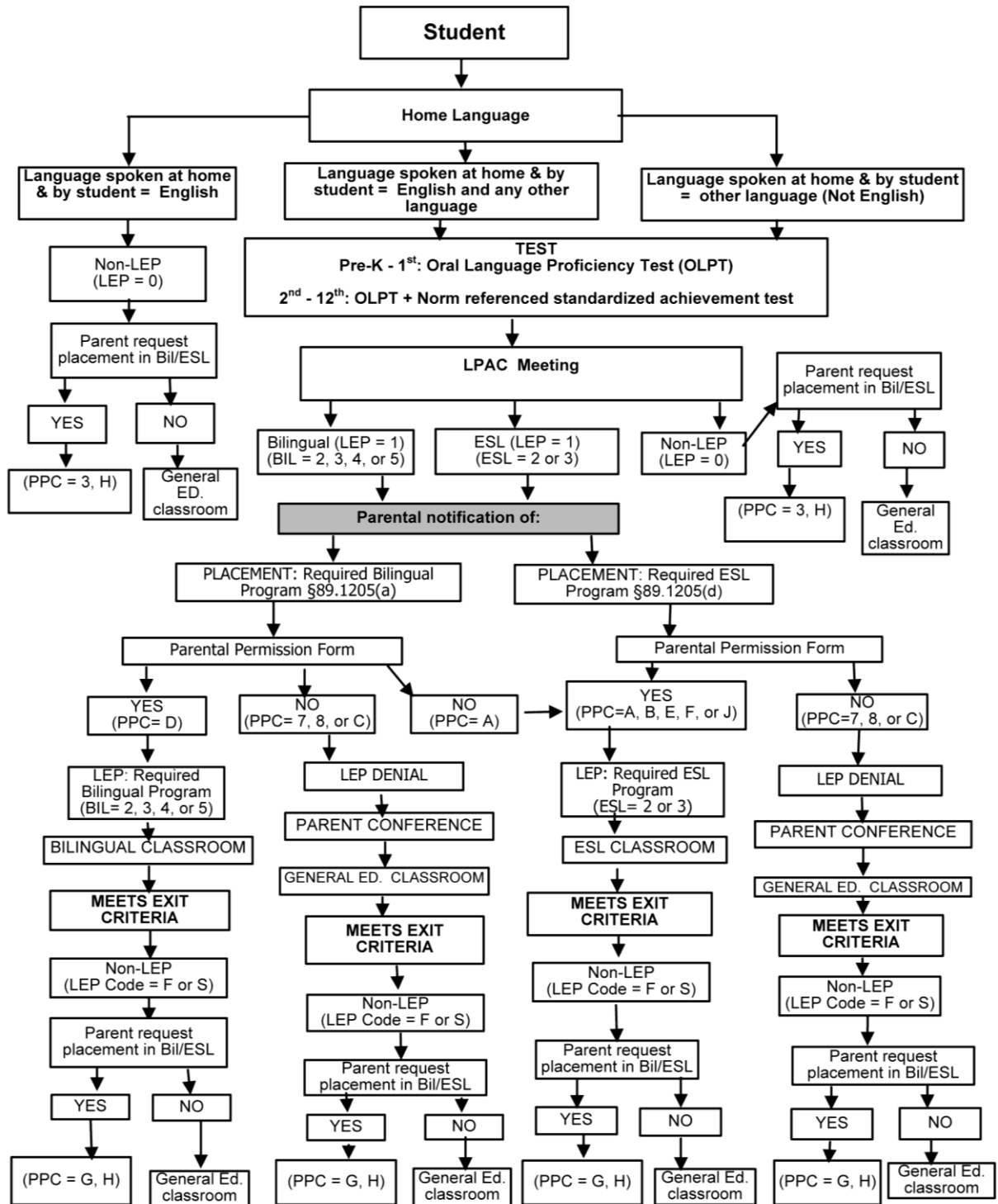
(A) is denied an English as a second language waiver for more than three consecutive years; or

(B) is granted a waiver based on meeting or exceeding the state average for limited English proficient student 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, §39.131.

*Source: The provisions of this §89.1207 adopted to be effective September 17, 2007, 32 TexReg 631*

# 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) Districts shall conduct only one home language survey of each student. The home language survey shall be administered to each student new to the district and to students previously enrolled who were not surveyed in the past. Districts shall require that the survey be signed by the student's parent or guardian for students in grades 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 permanent 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 (do you) speak most of the time?"

(c) Additional information may be collected by the 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 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.*

# Entry Assessment



## §89.1225. Testing and Classification of Students.

(a) For identifying limited English proficient students, 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 measure, or another test approved by TEA, unless the norm-referenced measure is not valid in accordance with subsection (f)(2)(C) of this section.

(b) Districts which provide a bilingual education program shall administer an oral language proficiency test in the home language of the students who are eligible for being served in the bilingual education program. If the home language of the students is Spanish, the district shall administer the Spanish version of the TEA-approved oral language proficiency test which was administered in English. If the home language of the students is other than Spanish, the district shall determine the students' 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 which shall identify a student as limited English proficient shall be established by 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 within four weeks of their enrollment. Norm-referenced assessment instruments, however, may be administered within the established norming period.

(f) For entry into a bilingual education or English as a second language program, a student shall be identified as limited English proficient using the following criteria.

(1) At prekindergarten through Grade 1, the 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) At 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 reading and language arts sections of the TEA-approved norm-referenced measure 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 assessment instrument or other test approved by 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 the four weeks of their initial enrollment in the district, students shall be identified as limited English proficient 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 limited English proficient and enrolled in the required bilingual education or English as a second language program within four weeks of the start of the school year in the fall.

- **Grades PK-1** = a TEA approved oral language proficiency test (OLPT) (**listening and speaking**) in English (and primary language for bilingual programs)
- **Grades 2-12** = a TEA approved oral language proficiency test (OLPT) (**listening and speaking**) in English (and primary language for bilingual programs) and the reading and language arts sections of an English norm-referenced standardized achievement test approved by the state (unless the English ability is so low that it would invalidate the test)
- PK-1 students whose OLPT (**listening and speaking**) score indicates limited English proficiency are identified as LEP.
- Grades 2-12 students are identified LEP if their OLPT score indicates limited English proficiency

and/or

- If they score below the 40th percentile on the reading and/or language arts sub-test of a state-approved norm-referenced standardized achievement test even if their OLPT

score indicates English proficiency. If a student scores above the 40th percentile on one (either language arts or reading) but below on the other (language arts or reading) the student is still considered LEP.

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

(a) Districts shall implement assessment procedures which differentiate between language proficiency and handicapping conditions in accordance with Subchapter AA of this chapter (relating to Special Education Services) and shall establish placement procedures which 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) A professional member of the language proficiency assessment committee shall serve on the admission, review, and dismissal (ARD) committee of each limited English proficient student who qualifies for services in the special education program.

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**§89.1233. Participation of Nonlimited English Proficiency Students.**

Districts may enroll students who are not limited English proficient 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.*

# LPAC Meeting

## MEMBERSHIP



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

- (a) Districts shall by local board policy establish and operate a language proficiency assessment committee. The 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 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, §29.063. If the district does not have an individual in one or more of the school job classifications required, the district shall designate another professional staff member to serve on the language proficiency assessment committee. The district may add other members to the committee in any of the required categories.
- (c) In 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 and a parent of a limited English proficient student participating in the program designated by the district.
- (d) No parent serving on the language proficiency assessment committee shall be an employee of the school district.
- (e) A district shall establish and operate a sufficient number of language proficiency assessment committees to enable them to discharge their duties within four weeks of the enrollment of limited English proficient students.
- (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 district shall be responsible for the orientation and training of all members, including the parents, of the language proficiency assessment committee.

# 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 limited English proficient students 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 limited English proficient student in accordance with the guidelines issued pursuant to §89.1210(b) and (d) of this title (relating to Program Content and Design);

(2) designate the level of academic achievement of each limited English proficient student;

(3) designate, subject to parental approval, the initial instructional placement of each limited English proficient student in the required program;

(4) facilitate the participation of limited English proficient students in other special programs for which they are eligible provided by the 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 (relating to Testing and Classification of Students), 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 limited English proficient student as outlined in Chapter 101, Subchapter AA, of this title (relating to Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments). The assessment options shall be:

(1) administration of the English version criterion-referenced test;

(2) administration of the Spanish version criterion-referenced test; or

(3) for certain immigrant students, exemption from the criterion-referenced test.

(i) In determining the appropriate assessment option, the language proficiency assessment committee shall consider the following criteria for each student:

(1) academic program participation (bilingual education or English as a second language) and language of instruction;

- (2) language proficiency, including literacy, in English and/or Spanish;
- (3) number of years enrolled in U.S. schools;
- (4) previous testing history;
- (5) level achieved on the state English language proficiency assessment in reading;
- (6) consecutive years of residence outside of the 50 U.S. states; and
- (7) schooling outside the U.S.

(j) The language proficiency assessment committee shall give written notice to the student's parent advising that the student has been classified as limited English proficient 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.

(k) Pending parent approval of a limited English proficient student's entry into the bilingual education or English as a second language program recommended by the language proficiency assessment committee, the district shall place the student in the recommended program, but may count only limited English proficient students with parental approval for bilingual education allotment.

(l) 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 in accordance with the Texas Education Code, §29.0561.

(m) The student's permanent record shall contain documentation of all actions impacting the limited English proficient student. This documentation shall include:

- (1) the identification of the student as limited English proficient;
- (2) the designation of the student's level of language proficiency;
- (3) the recommendation of program placement;
- (4) parental approval of entry or placement into the program;
- (5) the dates of entry into, and placement within, the program;
- (6) the dates of exemptions from the criterion-referenced test, criteria used for this determination, and additional instructional interventions provided to students to ensure adequate yearly progress;
- (7) the date of exit from the program and parent notification; and

(8) the results of monitoring for academic success, including students formerly classified as limited English proficient, as required under the Texas Education Code, §29.063(c)(4).

*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.*

## Parental Notification



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

(a) The parents shall be notified that their child has been classified as limited English proficient 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 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 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 district bilingual education allotment.

(c) The parent of a student enrolled in a district which is required to offer bilingual education or English as a second language programs may appeal to the commissioner of education if the 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.*

## Placement



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

- (a) Each school district which has an enrollment of 20 or more limited English proficient students 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 limited English proficient students 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 district shall provide a bilingual education program by offering a dual language program in prekindergarten through the elementary grades, as described in §89.1210 of this title (relating to Program Content and Design).
- (c) 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 limited English proficient students for whom a 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 district shall provide an English as a second language program by offering an English as a second language program as described in §89.1210 of this title (relating to Program Content and Design).
- (f) Districts may join with other 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.*



### **§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 limited English proficient student 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 district shall modify the instruction, pacing, and materials to ensure that limited English proficient students 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, districts shall use state-adopted English and Spanish instructional materials and supplementary materials as curriculum tools to enhance the learning process; in addition, districts may use other curriculum adaptations which have been developed. The bilingual education program shall address the affective, linguistic, and cognitive needs of limited English proficient students as follows.

(1) **Affective.** Limited English proficient students 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.** Limited English proficient students shall be provided instruction in the skills of comprehension, speaking, reading, and composition 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.** Limited English proficient students shall be provided instruction in mathematics, science, health, 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) English as a second language programs shall be intensive programs of instruction designed to develop proficiency in the comprehension, speaking, reading, and composition 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 regular program for nonlimited English proficient students to a full-time instructional setting utilizing 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 (relating to Curriculum Requirements). 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.

(e) The English as a second language program shall be an integral part of the regular educational program required under Chapter 74 of this title (relating to Curriculum Requirements). Districts shall use state-adopted English as a second language instructional materials and supplementary materials as curriculum tools. In addition, districts may use other curriculum adaptations which have been developed. The 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 limited English proficient students as follows.

(1) Affective. Limited English proficient students 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. Limited English proficient students shall be provided intensive instruction to develop proficiency in the comprehension, speaking, reading, and composition of 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. Limited English proficient students shall be provided instruction in English in mathematics, science, health, 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.

(f) Except in the courses specified in subsection (g) 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 limited English proficient students 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.

(g) In subjects such as art, music, and physical education, the limited English proficient students shall participate with their English-speaking peers in regular classes provided in the subjects. The 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.

(h) The required bilingual education or English as a second language programs shall be provided to every limited English proficient student with parental approval until such time that the student meets exit criteria as described in §89.1225(h) of this title (relating to Testing and Classification of Students) 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.*

# 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 regular, 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, §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 assessment instrument for a student who is enrolled in Grade 1 or 2; and

(3) TEA-approved criterion-referenced written tests when 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 district must ensure that limited English proficient students are prepared to meet academic standards required by 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 of the criterion-referenced assessment instrument required in the Texas Education Code, §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.

*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.*

## 2011–12 English Language Proficiency Exit Criteria Chart

At the end of the school year, a district may transfer (exit, reclassify, transition) a LEP student 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 satisfactory performance in all three assessment areas below and the results of a subjective teacher evaluation. <sup>1</sup>											
	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th
<b>Current School Yr Oral = Listening &amp; Speaking</b>	Scored Fluent on English OLPT <sup>1</sup>	Scored Fluent on English OLPT <sup>1</sup>	Scored Fluent on English OLPT <sup>1</sup>	Scored Fluent on English OLPT <sup>1</sup>	Scored Fluent on English OLPT <sup>1</sup>	Scored Fluent on English OLPT <sup>1</sup>	Scored Fluent on English OLPT <sup>1</sup>	Scored Fluent on English OLPT <sup>1</sup>	Scored Fluent on English OLPT <sup>1</sup>	Scored Fluent on English OLPT <sup>1</sup>	Scored Fluent on English OLPT <sup>1</sup>
<b>English Reading and ELA</b>	Norm-Refd. Standardized Achievmt. Test (Rdg./Lang.) 40 <sup>th</sup> percentile or above <sup>1</sup>	Norm-Refd. Standardized Achievmt. Test (Rdg./Lang.) 40 <sup>th</sup> percentile or above <sup>1</sup>	TELPAS Reading Advanced High	TELPAS Reading Advanced High	TELPAS Reading Advanced High	TELPAS Reading Advanced High	TELPAS Reading Advanced High	TELPAS Reading Advanced High	EOC English I Reading STAAR <sup>3</sup>	English ELA TAKS, TAKS (Accommodated) <sup>2</sup>	English ELA TAKS, TAKS (Accommodated) <sup>2</sup>
<b>English Writing</b>	Agency-Approved Writing Test <sup>1</sup>	Agency-Approved Writing Test <sup>1</sup>	Agency-Approved Writing Test <sup>1</sup>	Agency-Approved Writing Test <sup>1</sup>	Agency-Approved Writing Test <sup>1</sup>	Agency-Approved Writing Test <sup>1</sup>	Agency-Approved Writing Test <sup>1</sup>	Agency-Approved Writing Test <sup>1</sup>	Agency-Approved Writing Test <sup>1</sup>	Agency-Approved Writing Test <sup>1</sup>	EOC English I Writing STAAR <sup>4</sup>
<b>Subjective Teacher Evaluation</b>	Assessments, anecdotal notes, portfolios, etc.										

<sup>1</sup> In the 2011–12 Agency Approved List of Approved Tests for Assessment of Limited English Proficient Students: [http://www.tea.state.tx.us/index2.aspx?id=4098&menu\\_id=720](http://www.tea.state.tx.us/index2.aspx?id=4098&menu_id=720)  
 Note: LEP students may be exited only after end of first grade based on 19 TAC §89.1225(i)

<sup>2</sup> For eligible LEP students receiving special education services

<sup>3</sup> Exception: TELPAS Reading Advanced High will be used for students repeating grade 9 in the 2011–12 school year (since these students will graduate under the TAKS, not STAAR, program).

<sup>4</sup> Exception: An agency-approved writing test from the 2011–12 list of approved tests will be used for students repeating grade 9 in the 2011–12 school year (since these students will graduate under the TAKS, not STAAR, program).

Updated on 8/08/11

<sup>1</sup> 19 TAC §89.1225(h)

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

2011-12 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 *2010-2011 English Proficiency Exit Criteria Chart* found at [http://www.tea.state.tx.us/index2.aspx?id=4098&menu\\_id=720](http://www.tea.state.tx.us/index2.aspx?id=4098&menu_id=720) to exit limited English proficient (LEP) students from bilingual/ESL programs. The exit criteria under TAC §89.1225(h) apply to the vast majority of **LEP students who receive special education services**. In rare cases, a LEP student receiving special education services may qualify to be exited using criteria permitted under TAC §89.1225(k), which give special consideration to a LEP student 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.

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://www.tea.state.tx.us/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 language proficiency assessment committee (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.

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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

## **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.

- Consideration must be Individualized Education Program (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 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**

STAAR students (students' first entering 9th grade and below in school year 2011-2012):

- Performance standards for STAAR Modified and STAAR Alternate are not scheduled to be set until after the end of the 2011-2012 school year. For the 2011-2012 school year, the requirement to use academic content assessments of reading and writing will be waived for these students.

Students graduating under TAKS program (students in grades 10-12 and repeating 9th graders in school year 2011-2012):

- **Modification of performance standards on academic content assessments not permitted**

The Texas Education Agency has modified student performance standards on TAKS through the development of TAKS–M and TAKS–Alt. Further modification of performance standards on academic content assessments is not permitted. **State-established standards must be used.**

- **Selection of appropriate academic content assessments**

Students considered for exit criteria under TAC §89.1225(k) should be those designated to take TAKS–M or TAKS–Alt as determined by the ARD committee in conjunction with the LPAC. If a rare situation occurs in which TAKS (Accommodated) or TAKS is considered to be the appropriate academic content assessment for a student who needs modified English language proficiency standards, consult the education service center bilingual/ESL contacts for guidance. **Reminder: State-established standards must be used.**

## **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
- **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(m)(7) relating to exit from bilingual education or ESL services, the LPAC also documents the exit decision in the student's permanent record file.

Please see also: <http://www.tea.state.tx.us/index2.aspx?id=2147496923>.

# Required Summer School Programs



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

Summer school programs that are provided under the Texas Education Code, §29.060, for children of limited English proficiency who will be eligible for admission to kindergarten or first grade at the beginning of the next school year shall be implemented in accordance with this section.

### (1) Purpose of summer school programs.

(A) Limited English proficient students shall have an opportunity to receive special instruction designed to prepare them to be successful in kindergarten and first grade.

(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 limited English proficient students in accordance with §89.1210(c) and §89.1210(e) of this title (relating to Program Content and Design).

### (2) Establishment of, and eligibility for, the program.

(A) Each district required to offer a bilingual or special language program in accordance with the Texas Education Code, §29.053, shall offer the summer program. Programs under this subsection for students who will be in bilingual education kindergarten and first grade programs shall be bilingual education.

(B) To be eligible for enrollment, a student must be eligible for admission to kindergarten or to the first grade at the beginning of the next school year and must be limited English proficient.

(C) Limited English proficiency shall be determined by screening students using informal oral language inventories or oral proficiency instruments approved by the commissioner of education, or other appropriate instruments.

### (3) Operation of the program.

(A) Enrollment in the program is optional with the parents of the student.

(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 district is not required to provide transportation for the summer program.

(E) Teachers shall possess certification or endorsement as required in the Texas Education Code, §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 district may join with other 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 Texas Education Code, §29.153.

(4) Funding and records for programs.

(A) A district shall use state and local funds for program purposes. 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 Texas Education Code, §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 of education. The allotment per unit shall be determined by the commissioner based on funds available.

(iii) Any 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 districts must demonstrate that they have aggressively attempted to encourage student participation.

(iv) Payment to 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 of education in order for a district to be eligible for funding.

(B) A 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*

# Program Evaluation



## §89.1265. Evaluation.

- (a) All districts required to conduct a bilingual education or English as a second language program shall conduct periodic assessment and continuous diagnosis 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 limited English proficient students, 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 to be made available to monitoring teams according to §89.1260 of this title (relating to Monitoring of Programs and Enforcing Law and Commissioner's Rules).
  
- (c) Districts shall report to parents the progress of their child as a result of participation in the program offered to limited English proficient students 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 limited English proficient students.

*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*