

**ATTACHMENT II**  
**Text of Adopted New 19 TAC**

**Chapter 89. Adaptations for Special Populations**

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

**§89.1226. Testing and Classification of Students, Beginning with School Year 2019-2020.**

- (a) Beginning with school year 2019-2020, the provisions of this subsection supersede the provisions in §89.1225 of this title (relating to Testing and Classification of Students).
- (b) Within four weeks of initial enrollment in a Texas school, a student with a language other than English indicated on the home language survey shall be administered the state-approved English language proficiency test for identification as described in subsection (c) of this section and shall be identified as English learners and placed into the required bilingual education or ESL program in accordance with the criteria listed in subsection (f) of this section.
- (c) For identifying English learners, school districts shall administer to each student who has a language other than English as identified on the home language survey:
  - (1) in prekindergarten through Grade 1, the listening and speaking components of the state-approved English language proficiency test for identification; and
  - (2) in Grades 2-12, the listening, speaking, reading, and writing components of the state-approved English language proficiency test for identification.
- (d) School districts that provide a bilingual education program at the elementary grades shall administer a language proficiency test in the primary language of the student who is eligible to be served in the bilingual education program. If the primary language of the student is Spanish, the school district shall administer the Spanish version of the state-approved language proficiency test for identification. If a state-approved language proficiency test for identification is not available in the primary language of the student, the school district shall determine the student's level of proficiency using informal oral language assessment measures.
- (e) All of the language proficiency testing shall be administered by professionals or paraprofessionals who are proficient in the language of the test and trained in the language proficiency testing requirements of the test publisher.
- (f) For entry into a bilingual education or ESL program, a student shall be identified as an English learner using the following criteria.
  - (1) In prekindergarten through Grade 1, the student's score from the listening and speaking components on the state-approved English language proficiency test for identification is below the level designated for indicating English proficiency.
  - (2) In Grades 2-12, the student's score from the listening, speaking, reading, and writing components on the state-approved English language proficiency test for identification is below the level designated for indicating English proficiency.
- (g) A student shall be identified as an English learner if the student's ability in English is so limited that the English language proficiency assessment described in subsection (c) of this section cannot be administered.
- (h) The language proficiency assessment committee in conjunction with the admission, review, and dismissal (ARD) committee shall identify a student as an English learner if the student's ability in English is so limited or the student's disabilities are so severe that the English language proficiency assessment described in subsection (c) of this section cannot be administered. The decision for entry into a bilingual education or ESL program shall be determined by the language proficiency assessment committee in conjunction with the ARD committee in accordance with §89.1220(f) of this title (relating to Language Proficiency Assessment Committee).

- (i) For exit from a bilingual education or ESL program, a student may be classified as English proficient only at the end of the school year in which a student would be able to participate equally in a general education, all-English instructional program. This determination shall be based upon all of the following:
  - (1) a proficiency rating on the state-approved English language proficiency test for exit that is designated for indicating English proficiency in each the four language domains (listening, speaking, reading, and writing);
  - (2) passing standard met on the reading assessment instrument under the Texas Education Code (TEC), §39.023(a), or, for students at grade levels not assessed by the aforementioned reading assessment instrument, a score at or above the 40th percentile on both the English reading and the English language arts sections of the state-approved norm-referenced standardized achievement instrument; and
  - (3) the results of a subjective teacher evaluation using the state's standardized rubric.
- (j) A student may not be exited from the bilingual education or ESL program in prekindergarten or kindergarten. A school district must ensure that English learners are prepared to meet academic standards required by the TEC, §28.0211.
- (k) A student may not be exited from the bilingual education or ESL program if the language proficiency assessment committee has recommended designated supports or accommodations on the state reading assessment instrument.
- (l) For English learners who are also eligible for special education services, the standardized process for English learner program exit is followed in accordance with applicable provisions of subsection (i) of this section. However, annual meetings to review student progress and make recommendations for program exit must be made in all instances by the language proficiency assessment committee in conjunction with the ARD committee in accordance with §89.1230(b) of this title (relating to Eligible Students with Disabilities). Additionally, the language proficiency committee in conjunction with the ARD committee shall implement assessment procedures that differentiate between language proficiency and disabling conditions in accordance with §89.1230(a) of this title.
- (m) For an English learner with significant cognitive disabilities, the language proficiency assessment committee in conjunction with the ARD committee may determine that the state's English language proficiency assessment for exit is not appropriate because of the nature of the student's disabling condition. In these cases, the language proficiency assessment committee in conjunction with the ARD committee may recommend that the student take the state's alternate English language proficiency assessment and shall determine an appropriate performance standard requirement for exit by language domain under subsection (i)(1) of this section;
- (n) Notwithstanding §101.101 of this title (relating to Group-Administered Tests), all tests used for the purpose of identification, exit, and placement of students and approved by the TEA must be re-normed at least every eight years.