

The Texas Education Agency adopts amendments to §§101.1001, 101.1003, 101.1005, and 101.1007, concerning the participation of English language learners in state assessments. The amendments are adopted without changes to the proposed text as published in the June 21, 2024 issue of the *Texas Register* (49 TexReg 4561) and will not be republished. The adopted amendments align the rules with existing state and federal policies regarding the assessment of emergent bilingual (EB) students.

**REASONED JUSTIFICATION:** The adopted amendments to 19 TAC Chapter 101, Subchapter AA, Division 1, align rules relating to the assessment of EB students with existing state and federal statute. Specifically, the adopted amendments replace all references to "English learner (EL)" or "English language learner (ELL)" with "emergent bilingual (EB) student," in accordance with Texas Education Code (TEC), §29.052.

Section 101.1001, Scope of Rules, defines which students the provisions of Division 1 of Chapter 101, Subchapter AA, apply to. The adopted amendment clarifies that the 60 consecutive days referenced in the rule are "calendar" days for assessment purposes.

Section 101.1003, English Language Proficiency Assessments, clarifies the definition of an EB student and the requirements for EB students to be tested for English language proficiency. The adopted amendment clarifies that EB students in Grades 2-12 must meet the participation requirements to be assessed with the alternate English language proficiency assessment.

Section 101.1005, Assessments of Achievement in Academic Content Areas and Courses, addresses the academic assessment participation requirements for EB students. The adopted amendment updates the rules regarding the assessment options currently available. Specifically, subsection (a) is updated to clarify that only EB students in Grade 3 or higher are eligible to participate in state academic assessments.

Section 101.1005(b) clarifies that EB students take the English-version state assessment, with or without allowable testing accommodations, unless the Spanish-version state assessment is more appropriate or the student meets the participation requirements for the alternate assessment. The phrase "with or without allowable testing accommodations" replaces references to the linguistically accommodated version of the assessment since a separate linguistically accommodated version has been replaced with an embedded supports or "accommodated" version. The alternate assessment in subsection (b)(3) is clarified and re-numbered as new paragraph (2).

Language in §101.1005 was eliminated to clarify that all EB students, including those whose parents or guardians decline bilingual services, have access to appropriate assessments and accommodations. Other language was removed since accountability information is no longer within the scope of assessment rules.

Section 101.1007, Assessment Provisions for Graduation, outlines the special provision for eligible EB students related to the use of the State of Texas Assessments of Academic Readiness (STAAR®) English I end-of-course assessment in satisfying high school graduation requirements. The adopted amendment updates the language to include "EB students."

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began June 21, 2024, and ended July 22, 2024. Following is a summary of public comments received and agency responses.

**Comment:** One Texas teacher and one Texas administrator commented that the changes to the rule would discourage parents and guardians of EB students from accepting language services.

**Response:** The agency disagrees. Regardless of the changes, there are several benefits from participating in language services, including having the opportunity to receive the linguistic supports needed to access grade-level instruction and achieve academic English language proficiency.

**STATUTORY AUTHORITY.** The amendments are adopted under Texas Education Code, §39.023(a), (b), (c), and (l), which specify the required assessments for students in Grades 3-8, students who are significantly cognitively disabled, students enrolled in high school courses, and students whose primary language is Spanish, respectively; §39.023(m), which authorizes the commissioner of education to develop procedures for a language proficiency

assessment committee to determine which students qualify for an exemption from the administration of required assessments; TEC, §39.025, which establishes the secondary-level performance required to receive a Texas high school diploma; TEC, §39.027, which establishes the parameters by which an Emergent Bilingual (EB) student may be granted an exemption from an assessment instrument, defines recent unschooled immigrants and an unschooled asylee or refugee, and authorizes the commissioner to develop an assessment system to evaluate the English language proficiency of all EB students; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(B) and (b)(2)(G), which specify the academic testing requirements for students in Grades 3-12 and the English language proficiency testing requirements for EB students in Kindergarten-Grade 12, respectively.

**CROSS REFERENCE TO STATUTE.** The amendments implement Texas Education Code, §§39.023, 39.025, and 39.027; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2).

<rule>

### **§101.1001. Scope of Rules.**

- (a) Except as specified in subsection (b) of this section, the provisions of this division shall apply to all students.
- (b) The provisions of §101.1005(b)(1)-(2) of this title (relating to Assessments of Achievement in Academic Content Areas and Courses) and §101.1007 of this title (relating to Assessment Provisions for Graduation) shall apply beginning with students first enrolled in Grade 9 or below in the 2011-2012 school year.
- (c) For purposes of this subchapter, a student who has been enrolled in a U.S. school for at least 60 consecutive calendar days during a school year is considered to have been enrolled in a U.S. school for that school year.

### **§101.1003. English Language Proficiency Assessments.**

- (a) In Kindergarten-Grade 12, an emergent bilingual (EB) student, as defined by Texas Education Code (TEC), Chapter 29, Subchapter B, as a student whose primary language is other than English and whose English language skills are such that the student has difficulty performing ordinary classwork, shall be administered state English language proficiency assessments annually in listening, speaking, reading, and writing to fulfill state requirements under TEC, Chapter 39, Subchapter B, and federal requirements.
- (b) In rare cases, the admission, review, and dismissal (ARD) committee in conjunction with the language proficiency assessment committee (LPAC) may determine that it is not appropriate for an EB student in Grades 2-12 who receives special education services to participate in the general English language proficiency assessment required by subsection (a) of this section for reasons associated with the student's particular disability.
  - (1) Students with the most significant cognitive disabilities who cannot participate in the general English language proficiency assessment, even with allowable accommodations, and meet the participation requirements for the alternate English language proficiency assessment shall participate in the alternate English language proficiency assessment to meet federal requirements.
  - (2) The ARD committee shall document the decisions and justifications in the student's individualized education program, and the LPAC shall document the decisions and justifications in the student's permanent record file.
- (c) In the case of an EB student who receives special education services, the ARD committee in conjunction with the LPAC shall determine and document the need for allowable testing accommodations in accordance with administrative procedures established by the Texas Education Agency.

### **§101.1005. Assessments of Achievement in Academic Content Areas and Courses.**

- (a) The language proficiency assessment committee (LPAC) shall select the appropriate assessment option for each emergent bilingual (EB) student in Grade 3 or higher in accordance with this subchapter. For each EB student who receives special education services, the student's admission, review, and dismissal (ARD) committee in conjunction with the student's LPAC shall select the appropriate assessments. The LPAC shall document the decisions and justifications in the student's permanent record file, and the ARD committee shall document the decisions and justifications in the student's individualized education program. Assessment decisions shall be made on an individual student basis and in accordance with administrative procedures established by the Texas Education Agency (TEA).
- (b) Except as provided by subsection (c) of this section, an EB student shall participate in the Grades 3-8 and end-of-course assessments, with or without allowable testing accommodations, as required by Texas Education Code (TEC), §39.023(a) and (c). Except as specified in paragraphs (1) and (2) of this subsection, an EB student shall be administered the general form of the English-version state assessment.
  - (1) An EB student in Grades 3-5 may be administered the Spanish-version state assessment, with or without allowable testing accommodations, if the assessment in Spanish is the most appropriate measure of the student's academic progress, in accordance with TEC, §39.023(l).
  - (2) An EB student in Grade 3 or higher who receives special education services based on the most significant cognitive disabilities may be administered an alternate assessment instrument based on alternative achievement standards, in accordance with TEC, §39.023(b), if the student meets the participation requirements.
- (c) In accordance with TEC, §39.027(a), an unschooled asylee or refugee who meets the criteria of paragraphs (1)-(3) of this subsection shall be granted an exemption from an administration of an assessment instrument under TEC, §39.023(a), (b), or (l). This exemption will only apply during the school year an unschooled asylee or refugee is first enrolled in a U.S. public school. An unschooled asylee or refugee is a student who:
  - (1) enrolled in a U.S. school as an asylee as defined by 45 Code of Federal Regulations §400.41 or a refugee as defined by 8 United States Code §1101;
  - (2) has a Form I-94 Arrival/Departure record, or a successor document, issued by the United States Citizenship and Immigration Services that is stamped with "Asylee," "Refugee," or "Asylum"; and
  - (3) as a result of inadequate schooling outside the United States, lacks the necessary foundation in the essential knowledge and skills of the curriculum prescribed under TEC, §28.002, as determined by the LPAC.
- (d) For purposes of LPAC determinations in subsection (c) of this section, inadequate schooling outside the United States is defined as little or no formal schooling outside the United States such that the asylee or refugee lacked basic literacy in his or her primary language upon enrollment in school in the United States.
- (e) The LPAC shall, in conjunction with the ARD committee if the EB student is receiving special education services under TEC, Chapter 29, Subchapter A, determine and document any allowable testing accommodations for assessments under this section in accordance with administrative procedures established by TEA.
- (f) School districts may administer the assessment of academic skills in Spanish to a student who is not identified as an EB student but who participates in a bilingual program if the LPAC determines the assessment in Spanish to be the most appropriate measure of the student's academic progress.

### **§101.1007. Assessment Provisions for Graduation.**

- (a) Although an emergent bilingual (EB) student shall not be exempt from taking an end-of-course assessment for reasons associated with limited English proficiency or inadequate schooling outside the United States, the special provision under subsection (b) of this section shall apply to an EB student enrolled in an English I course or an English for Speakers of Other Languages (ESOL) I course if the EB student:
  - (1) has been enrolled in U.S. schools for three school years or less or qualifies as an unschooled asylee or refugee enrolled in U.S. schools for five school years or less; and

- (2) the student has not yet demonstrated English language proficiency in reading as determined by the assessment under §101.1003 of this title (relating to English Language Proficiency Assessments).
- (b) Concerning the applicable English I assessment, an EB student who meets the eligibility criteria in subsection (a) of this section shall not be required to retake the assessment each time it is administered if the student passes the course but fails to achieve the passing standard on the assessment.