

The Texas Education Agency (TEA) adopts amendments to §§89.1201, 89.1203, 89.1205, 89.1207, 89.1210, 89.1215, 89.1220, 89.1226-89.1230, 89.1233, 89.1235, 89.1240, 89.1245, 89.1250, and 89.1265, concerning the state plan for educating emergent bilingual students. The amendments to §§89.1201, 89.1203, 89.1205, 89.1210, 89.1215, 89.1220, 89.1226-89.1230, 89.1233, 89.1235, 89.1240, 89.1245, 89.1250, and 89.1265 are adopted without changes to the proposed text as published in the October 11, 2024 issue of the *Texas Register* (49 TexReg 8305) and will not be republished. The amendment to §89.1207 is adopted with changes to the proposed text as published in the October 11, 2024 issue of the *Texas Register* (49 TexReg 8305) and will be republished. The adopted amendments clarify terminology based on stakeholder feedback and codify current program practices and requirements. Additionally, the adopted amendment to §89.1226 aligns with recommendations from the U.S. Department of Education (USDE) Office of English Language Acquisition regarding testing accommodations.

**REASONED JUSTIFICATION:** Changes are adopted throughout 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter BB, Commissioner's Rules Concerning State Plan for Educating Emergent Bilingual Students, to clarify terms, including defining bilingual education to include both bilingual and English as a second language (ESL) programs; establish an acronym for the term "emergent bilingual"; replace the word "must" with the word "shall"; and refer to "home language" instead of "primary language" for alignment.

Section 89.1201 establishes the policy of the state for a student who has a home language other than English and who is identified as an emergent bilingual (EB) student. The adopted amendment to subsection (b) clarifies the goal of bilingual models to include dual language immersion (DLI) and transitional bilingual education. The adopted amendment to subsection (c) clarifies the goal of ESL program models to include content-based and pull-out.

Section 89.1203 establishes definitions. The adopted amendment clarifies terminology in paragraph (1) to include alternatives methods; aligns terminology in paragraph (3) regarding a "certified bilingual program teacher"; clarifies in paragraph (5) that the goal of the content-based language instruction is used to develop the home or partner language and English of an EB student; establishes in paragraph (6) that the two state-approved DLI program models are one-way DLI and two-way DLI; establishes in paragraph (7) that dual-language instruction includes both DLI and transitional bilingual education programs; clarifies in paragraph (9) that an ESL program includes both content-based and pull-out program models; clarifies in paragraph (10) the definition of English language proficiency standards (ELPS); adds new paragraph (12) to define "enrollment"; clarifies exit criteria for an EB student in re-numbered paragraph (13); adds new paragraph (14) to define "home language"; and deletes the definition of "primary language" to align terminology from "primary" to "home" language.

Section 89.1205 establishes required bilingual and ESL programs. The adopted amendment to subsection (f) combines existing information about what school districts are authorized to establish in addition to the required bilingual program.

Section 89.1207 establishes criteria for bilingual program exceptions and ESL program waivers. The adopted amendment integrates bilingual program exceptions and ESL waivers, eliminating the need for separate subsections on exceptions and waivers. Subsection (d)(3) includes the term "affective" to align with §89.1210(b)(1)-(3). Subsection (d) restructures existing text to further clarify application requirements and make conforming edits. Subsection (d)(3)(A) and (B) specify the application requirements for EB students in a bilingual program or an ESL program. Subsection (f) establishes criteria for the approval of bilingual exceptions and ESL waivers. Subsection (f)(2) clarifies that the three approval requirements for a bilingual exception also applies for approval of an ESL waiver.

Based on public comment, §89.1207(f), relating to approval of a bilingual exception and/or ESL waiver, has been changed at adoption to specify that the requirements and measurable targets of the action plan must be met in addition to one other existing criterion.

Section 89.1210 establishes program content and design. The adopted amendment aligns terminology.

Section 89.1215 establishes criteria for the home language survey. The adopted amendment restructures the rule to further clarify the requirements.

Section 89.1220 establishes criteria for the language proficiency assessment committee (LPAC). Based on stakeholder feedback from educators, subsection (c) is amended to clarify that all required members of an LPAC be present to make individualized student decisions. The adopted amendment to subsection (g)(2)(B) allows the LPAC to recommend program participation based on available program models within the district for transferring EB students. Subsection (g)(2)(C) clarifies that parents have the right to begin to receive program services after previously indicating denial of services. The adopted amendment to subsection (g)(3)(A) and (B) clarifies LPAC criteria for ESL and bilingual programs rather than addressing language first and academic progress second. Additional adopted changes throughout the section clarify terminology.

Section 89.1226 establishes criteria for testing and classification of EB students. An adopted amendment in subsection (h) aligns with stakeholder feedback that an LPAC does not "determine," but instead "recommends," placement. The adopted amendment to subsection (i) incorporates rule text to clarify that EB students with parental denials are eligible to receive linguistic or non-linguistic based designated supports or accommodations on the State of Texas Assessments of Academic Readiness (STAAR®) when recommended by the LPAC or any other committee. The adopted amendment also clarifies that the designated supports or accommodations cannot prevent an EB student from meeting reclassification criteria to align with the USDE consolidated Title III audit. The adopted amendment to subsection (i)(2) clarifies the assessment criteria for reclassification.

Section 89.1227 establishes minimum requirements for the DLI program model. The adopted amendment to subsection (a) clarifies requirements.

Section 89.1228 establishes criteria for two-way DLI program model implementation. The adopted amendment to subsection (b) clarifies the three eligibility categories of students participating in a two-way DLI program model, including EB students, reclassified EB students, and non-EB students. Subsection (c)(5) is updated to align with the dual-language instruction framework.

Section 89.1229 establishes general requirements for recognition of DLI program models. The adopted amendment clarifies terminology throughout the section.

Section 89.1230 establishes criteria for eligible students with disabilities. The adopted amendment aligns terminology throughout the section.

Section 89.1233 establishes criteria for the participation of non-EB students. Based on stakeholder feedback, subsection (c) is amended to clarify program participation percentages.

Section 89.1235 establishes criteria for facilities. The adopted amendment restructures the rule to provide clarity.

Section 89.1240 establishes criteria for parental authority and responsibility. The adopted amendment restructures the rule to provide clarity.

Section 89.1245 establishes staffing and staff development. The adopted amendment clarifies terminology throughout the section.

Section 89.1250 establishes criteria for required summer school programs. An adopted amendment to subsection (c) aligns with Texas Education Code (TEC), §29.060, clarifying the required schedule for districts operating on a semester schedule as well as schedules other than semester.

Section 89.1265 establishes criteria for program evaluation. The adopted amendment clarifies and aligns terminology throughout the section.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began October 11, 2024, and ended November 12, 2024. Following is a summary of public comments received and agency responses.

**Comment:** A Texas school administrator commented in support of §89.1226(i), which adds linguistic support to all emergent bilingual students, including parent denials.

Response: The agency agrees.

Comment: The Intercultural Development Research Association (IDRA) commented in support of proposed changes to §89.1228 to expand the quality of dual language immersion programs.

Response: The agency agrees.

Comment: IDRA commented in support of the proposed amendment to §89.1229(b), noting the expansion of opportunities for currently identified emergent bilingual students to receive performance acknowledgment in bilingualism and biliteracy without having to be reclassified. IDRA also requested that the agency make corresponding changes to 19 TAC Chapter 74.

Response: The agency agrees in part. The comment requesting amendments to 19 TAC Chapter 74 is outside the scope of the proposed rulemaking.

Comment: IDRA commented in support of the proposed amendment to §89.1245(f)(1), which expands bilingual/ESL program training availability for Prekindergarten through Grade 12 staff.

Response: The agency agrees.

Comment: IDRA requested adding tightened criteria for school districts to apply for bilingual exceptions and ESL waivers in the proposed amendment to §89.1207(f), specifically requesting a requirement to meet the district's proposed action plan (as outlined in §89.1207(f)(1)(B) and (2)(B)) in addition to at least one of the other criteria.

Response: The agency agrees that the action plan is a critical part of a local education agency's path to teacher certification compliance. At adoption, §89.1207(f) was modified to require meeting the requirements and measurable targets of the action plan in addition to one other existing criterion for approval of a bilingual exception and/or ESL waiver.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §29.051, which establishes the state policy regarding bilingual and special language programs; TEC, §29.052, which establishes the definitions of an emergent bilingual student and parent; TEC, §29.053, which establishes the criteria for the establishment of bilingual education and special language programs; TEC, §29.054, which establishes the criteria for exceptions; TEC, §29.055, which establishes the criteria for program content and the method of instruction; TEC, §29.056, which establishes the criteria for enrollment of students in the program; TEC, §29.0561, which establishes the criteria for the evaluation of transferred students and reenrollment procedures; TEC, §29.057, which establishes the criteria for facilities and classes of bilingual education and special language programs; TEC, §29.058, which establishes the criteria for enrollment of students who do not have limited English proficiency; TEC, §29.059, which establishes the criteria for cooperation among districts to provide bilingual education and special language programs; TEC, §29.060, which establishes the criteria for preschool, summer school, and extended time programs; TEC, §29.061, which establishes the criteria for bilingual education and special language program teachers; TEC, §29.062, which establishes the criteria for monitoring compliance to evaluate the effectiveness of programs related to bilingual education and special language programs; TEC, §29.063, which establishes the criteria for language proficiency assessment committees; TEC, §29.064, which establishes the criteria for appeals; and TEC, §29.066, which establishes the criteria for a district's Public Education Information Management System (PEIMS) reporting requirements.

CROSS REFERENCE TO STATUTE. The amendments implements Texas Education Code (TEC), §§29.051, 29.052, 29.053, 29.054, 29.055, 29.056, 29.0561, 29.057, 29.058, 29.059, 29.060, 29.061, 29.062, 29.063, 29.064, and 29.066.

<rule>

### **§89.1201. Policy.**

- (a) It is the policy of the state that every student in the state who has a home language other than English and who is identified as an emergent bilingual (EB) student shall be provided a full opportunity to participate in bilingual education, to include bilingual and English as a second language (ESL) programs, as required in Texas Education Code (TEC), Chapter 29, Subchapter B. To ensure equal educational opportunity, as required in TEC, §1.002(a), each school district shall:
  - (1) identify EB students based on criteria established by the state;
  - (2) provide bilingual education, including bilingual and ESL programs, as integral parts of the general program as described in TEC, §4.002;
  - (3) seek appropriately certified teaching personnel to ensure that EB students are afforded full opportunity to master the essential knowledge and skills required by the state; and
  - (4) assess for academic achievement and linguistic progress in accordance with TEC, Chapter 29, Subchapter B, to ensure accountability for EB students and the schools that serve them.
- (b) The goal of bilingual program models, including dual-language immersion and transitional bilingual education, shall be to enable EB students to develop home or partner language literacy and academic skills through the integrated use of content-based language instructional methods to become proficient in listening, speaking, reading, and writing in the English language. Such programs shall include the mastery of grade level reading and language arts knowledge and skills in the home or partner language and in English, along with mathematics, science, and social studies knowledge and skills as integral parts of the academic goals for all students to enable EB students to participate equitably in school.
- (c) The goal of ESL program models, including content-based and pull-out, shall be to enable EB students to become proficient in listening, speaking, reading, and writing in the English language through the integrated use of content-based language instructional methods. The ESL program shall include the mastery of grade level English reading and language arts, mathematics, science, and social studies knowledge and skills in English as integral parts of the academic goals for all students to enable EB students to participate equitably in school.
- (d) Bilingual and ESL programs shall be integral parts of the total school program. Such programs shall use instructional approaches designed to meet the specific language needs of EB students. The curriculum content of the programs shall be based on the Texas Essential Knowledge and Skills and the English Language Proficiency Standards required by the state.

### **§89.1203. Definitions.**

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

- (1) Alternative methods --A temporary instructional plan that meets the affective, linguistic, and cognitive needs of emergent bilingual (EB) students and equips the teacher under a bilingual exception or an English as a second language (ESL) waiver described in §89.1207 of this title (relating to Bilingual Program Exceptions and English as a Second Language Program Waivers) to align closely to the required bilingual or ESL program through the comprehensive professional development plan.
- (2) Bilingual education allotment (BEA) --An adjusted basic funding allotment provided for each school district based on student average daily attendance in a bilingual or an ESL program in accordance with Texas Education Code (TEC), §48.105.
- (3) Certified bilingual program teacher--A teacher holding bilingual certification and appropriately certified for the grade level and content area. The term "certified bilingual program teacher" is synonymous with the term "professional bilingual educator" used in TEC, §29.063.
- (4) Certified English as a second language teacher--A teacher appropriately certified in ESL as well as for the grade level and content area. The term "certified English as a second language teacher" as

used in this subchapter is synonymous with the term "professional transitional language educator" used in TEC, §29.063.

- (5) Content-based language instruction (CBLI) --An integrated approach to language instruction in which language is developed within the context of content delivery that is linguistically sustaining and is used across all programs for EB students to develop the home or partner language and English.
- (6) Dual language immersion (DLI) program--A state-approved bilingual program in accordance with TEC, §29.066, that uses English and a partner language. The two state-approved DLI program models are one-way DLI and two-way DLI.
- (7) Dual-language instruction--An educational approach that focuses on the use of English and the student's home or partner language for instructional purposes as described in TEC, §29.055, to include both DLI and transitional bilingual education (TBE) programs.
- (8) Emergent bilingual (EB) --A student identified by the Language Proficiency Assessment Committee (LPAC) who is in the process of acquiring English and has another language as the student's home language. This term is interchangeable with English learner as used in federal regulations and replaces the term "limited English proficient student" formerly used in TEC, Chapter 29, Subchapter B.
- (9) English as a second language (ESL) program--A special language program in accordance with TEC, Chapter 29, Subchapter B, to include both content-based and pull-out program models. Another related term for an ESL program is "English as an additional language program."
- (10) English language proficiency standards (ELPS)--The ELPS outline English language proficiency level descriptors and student expectations for EB students. School districts shall implement these standards as an integral part of each subject in the required curriculum. The ELPS are to be published along with the Texas Essential Knowledge and Skills for each subject in the required curriculum, as described in §74.4(a)(1) of this title (relating to English Language Proficiency Standards).
- (11) English proficient student--A former EB student who has met reclassification as English proficient by the LPAC.
- (12) Enrollment--Receiving instruction by attendance in a public school. This term does not apply to students who are registered but not yet receiving instruction.
- (13) Exit--The point at which an EB student is reclassified as English proficient and ends bilingual or ESL program participation with LPAC recommendation and parental approval. The term "exit" as used in this subchapter is synonymous with the description in TEC, Chapter 29, Subchapter B, of a student having been "transferred out" of bilingual or special language programming. For the purpose of meeting the goals of a DLI program, the LPAC recommends that the EB student is reclassified as English proficient but continues participation in the program to further develop biliteracy for the duration of the program for prekindergarten through Grade 12.
- (14) Home language--A language other than English that is indicated on the home language survey under §89.1215 of this title (relating to Home Language Survey) as being used at home, used by the child at home, or used by the child in a previous home setting.
- (15) Language allocation plan--A strategically developed and clearly communicated plan for a DLI program that defines the percentage of language of instruction for each content area and grade level.
- (16) Language Proficiency Assessment Committee (LPAC) --A designated group of committee members as described in §89.1220 of this title (relating to Language Proficiency Assessment Committee (LPAC)) and TEC, §26.063, that ensures the appropriate identification, placement, assessment, services, reclassification, and monitoring of EB students. The LPAC also meets in conjunction with all other committees related to programs and services for which an EB student qualifies.

- (17) Non-emergent bilingual student--A student who has never been classified as an EB student by an LPAC.
- (18) Paired teaching--A teaching partnership permissible in a DLI program model when half the content area instruction is in the partner language and half is in English (50/50 language allocation). One teacher provides content area instruction in the partner language while the second teacher provides content area instruction delivered in English. The teacher instructing in the partner language shall hold bilingual certification while the teacher instructing in English may hold either bilingual or ESL certification.
- (19) Parent--The parent or legal guardian of the student in accordance with TEC, §29.052(2).
- (20) Partner language--The designated language of instruction other than English within a DLI program. The partner language within a DLI program may or may not be the home language of a DLI program student.
- (21) Prekindergarten--Students enrolled in a 3- or 4-year-old prekindergarten program as well as 3- or 4-year-old students enrolled in an early education setting.
- (22) Reclassification--The process by which the LPAC determines that an EB student has met the appropriate criteria to be classified as English proficient, and the student enters year 1 of monitoring as indicated in the Texas Student Data System Public Education Information Management System.
- (23) School district-- The term school district includes an open-enrollment charter school or a district of innovation.

**§89.1205. Required Bilingual and English as a Second Language (ESL) Programs.**

- (a) Each school district that has an enrollment of 20 or more students identified as emergent bilingual (EB) students in any language classification in the same grade level district-wide shall offer a bilingual program as described in subsection (b) of this section for the EB students in prekindergarten through the elementary grades with that language classification. "Elementary grades" shall include prekindergarten through Grade 5; Grade 6 shall be included when clustered with elementary grades.
- (b) A school district required to provide a bilingual program as described in subsection (a) of this section shall offer dual-language instruction (English and home or partner language) in prekindergarten through the elementary grades, using one of the four bilingual program models described in §89.1210 of this title (relating to Program Content and Design).
- (c) All EB students for whom a school district is not required to offer a bilingual program shall be provided an English as a second language (ESL) program, regardless of the students' grade levels and home language, and regardless of the number of such students, except in cases where a district exercises the option described in subsection (f) of this section.
- (d) A school district required to provide an ESL program as described in subsection (c) of this section shall provide an ESL program using one of the two models described in §89.1210 of this title.
- (e) School districts may join with other school districts to provide bilingual or ESL programs.
- (f) In addition to the required bilingual programs, school districts are also authorized to establish a bilingual program:
  - (1) if they have an enrollment of fewer than 20 students as described in subsection (a) of this section; and
  - (2) at grade levels in which the bilingual program is not required under subsection (a) of this section.
- (g) Under the authorization described in subsection (f) of this section, school districts shall adhere to all program requirements as described in §§89.1210 of this title, 89.1227 of this title (relating to Minimum Requirements for Dual Language Immersion Program Models), 89.1228 of this title (relating to Two-Way Dual Language Immersion Program Model Implementation), and 89.1229 of this title (relating to General Standards for Recognition of Dual Language Immersion Program Models).

**§89.1207. Bilingual Program Exceptions and English as a Second Language (ESL) Program Waivers.**

(a) Purpose.

A school district that is unable to provide a bilingual and/or an English as a second language (ESL) program as required by §89.1205(a) and (c) of this title (relating to Required Bilingual and English as a Second Language (ESL) Programs) because of an insufficient number of appropriately certified teachers shall request from the commissioner of education an exception to the bilingual program and/or a waiver for the ESL program and the approval of temporary alternative methods as defined in §89.1203(1) of this title (relating to Definitions) that align as closely as possible to the required bilingual or ESL program.

(b) Funding. Emergent bilingual (EB) students with parental approval for program participation under a bilingual exception or an ESL waiver will be included in the bilingual education allotment (BEA) designated for temporary alternative methods.

(c) Duration. The approval of a bilingual exception or an ESL waiver shall be valid only during the school year for which it was granted, which includes summer school.

(d) Application requirements. The bilingual exception and/or ESL waiver application shall be submitted by November 1 and shall include:

- (1) a statement of the reasons the school district is unable to provide a sufficient number of appropriately certified teachers to offer the bilingual and/or ESL program with supporting documentation as described in Texas Education Code (TEC), §29.054(b)(1), (2), and (3);
- (2) a description of the temporary alternative methods to meet the affective, linguistic, and cognitive needs of EB 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) to include foundation and enrichment areas, English language proficiency standards (ELPS), and college and career readiness standards (CCRS);
- (3) an assurance that appropriately certified teachers available in the school district will be assigned to ensure that the affective, linguistic, and cognitive needs of EB students with beginning and intermediate levels of English proficiency are served on a priority basis by doing the following:
  - (A) in a bilingual program, assigning appropriately certified teachers beginning in prekindergarten followed successively by subsequent grade levels to ensure effective early literacy development; or
  - (B) in an ESL program, assigning appropriately certified teachers to serve students with the highest linguistic needs at any grade level;
- (4) an assurance that the school district will implement a comprehensive professional development plan that:
  - (A) is ongoing and targets the development of the knowledge, skills, and competencies needed to serve the needs of EB students;
  - (B) includes the teachers who are not certified or not appropriately certified who are assigned to implement the temporary alternative methods that align closely to the required bilingual or ESL program; and
  - (C) may include additional teachers who work with EB students;
- (5) an assurance that at least 10% of the total BEA shall be used to fund the comprehensive professional development plan required under paragraph (4) of this subsection when applying for a bilingual exception and/or an ESL waiver;
- (6) an assurance that the school district will develop an action plan to ensure that the programs required under §89.1205(a) and (c) of this title will be provided the subsequent year, including its plans for recruiting an adequate number of appropriately certified teachers to eliminate the need for subsequent exception waivers and measurable targets for the subsequent year as required by TEC, §29.054(b)(4); and

- (7) an assurance that the school district shall satisfy the additional reporting requirements described in §89.1265(c) of this title (relating to Program Evaluation).
- (e) School district responsibilities. A school district submitting a bilingual education exception and/or an ESL waiver shall maintain written records of all documents supporting the submission and assurances listed in subsection (d) of this section, including:
- (1) a description of the temporary alternative methods designed to meet the affective, linguistic, and cognitive needs of the EB students;
  - (2) the number of teachers for whom a bilingual exception or an ESL waiver is needed by grade level and per campus;
  - (3) a copy of the school district's comprehensive professional development plan;
  - (4) a copy of the BEA budget documenting that a minimum of 10% of the funds were used to fund the comprehensive professional development plan; and
  - (5) a description of the actions taken to recruit an adequate number of appropriately certified teachers.
- (f) Approval of bilingual exceptions and ESL waivers. A bilingual exception and/or an ESL waiver will be granted by the commissioner if the following criteria are met for each program.
- (1) For a bilingual exception, the school district meets the requirements and measurable targets of the action plan described in subsection (d)(6) of this section submitted the previous year and approved by the Texas Education Agency (TEA) and also meets one of the following criteria:
    - (A) meets or exceeds the state average for EB student performance on the required state assessments; or
    - (B) reduces by 25% the number of teachers under the bilingual exception when compared to the number of teachers under the bilingual exception the previous year.
  - (2) For an ESL waiver, the school district meets the requirements and measurable targets of the action plan described in subsection (d)(6) of this section submitted the previous year and approved by TEA and also meets one of the following criteria.
    - (A) meets or exceeds the state average for EB student performance on the required state assessments; or
    - (B) reduces by 25% the number of teachers under the ESL waiver when compared to the number of teachers under the ESL waiver the previous year.
- (g) Denial of bilingual exceptions and ESL waivers. A school district denied a bilingual exception and/or an ESL waiver shall submit to the commissioner a detailed action plan for complying with required regulations for the following school year.
- (h) Appeals. A school district denied a bilingual exception and/or an ESL 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.
- (i) Special accreditation investigation. The commissioner may authorize a special accreditation investigation under TEC, §39.003, if a school district is denied a bilingual exception and/or an ESL waiver for more than three consecutive years.
- (j) Sanctions. Based on the results of a special accreditation investigation, the commissioner may take appropriate action under TEC, §39A.002.

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

- (a) Each school district required to offer bilingual education through bilingual or English as a second language (ESL) program models shall provide each emergent bilingual (EB) student the opportunity to be enrolled in the required program at their grade level. Each student's level of proficiency shall be designated by the Language Proficiency Assessment Committee (LPAC) in accordance with §89.1220(g) of this title (relating

to Language Proficiency Assessment Committee (LPAC)). The school district shall accommodate the instruction, pacing, and materials to ensure that EB students have a full opportunity to master the essential knowledge and skills of the required curriculum, which includes the Texas Essential Knowledge and Skills (TEKS) and English language proficiency standards (ELPS). Students participating in bilingual program models may demonstrate their mastery of the essential knowledge and skills in either the home or partner language or in English for each content area.

- (1) Bilingual program models established by a school district shall be full-time programs of dual-language instruction (English and home or partner language) that provides for learning academic and literacy skills in the student's home or program partner language and for carefully structured and sequenced mastery of English language skills under Texas Education Code (TEC), §29.055(a), throughout the elementary grades and beyond if the district so chooses as defined in §89.1205(a) of this title (relating to Required Bilingual and English as a Second Language (ESL) Programs).
  - (2) ESL program models established by a school district shall be programs of intensive instruction in English in which ESL teachers recognize and address language differences in accordance with TEC, §29.055(a), in prekindergarten through Grade 12.
- (b) Bilingual and ESL program models shall be integral parts of the general educational program required under Chapter 74 of this title (relating to Curriculum Requirements) to include foundation and enrichment areas, ELPS, and college and career readiness standards. In bilingual program models, school districts shall purchase instructional materials in all program languages with the district's instructional materials allotment or otherwise acquire instructional materials for use in bilingual program classes in accordance with TEC, §31.029(a). Instructional materials for bilingual programs on the list adopted by the commissioner of education, as provided by TEC, §31.0231, may be used as curriculum tools to enhance the learning process. The school district shall ensure ongoing collaboration between bilingual and ESL programs and the general education programs to provide equitable educational access for all learners. Bilingual and ESL programs shall address the affective, linguistic, and cognitive needs of EB students as follows.
- (1) Affective.
    - (A) EB students in a bilingual program shall be provided instruction using content-based language instructional methods in English and/or their home or partner language to acclimate students to the school environment and to develop academic language skills, which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall be designed to consider the students' learning experiences and shall incorporate the cultural aspects of the students' backgrounds in accordance with TEC, §29.055(b).
    - (B) EB students in an ESL program shall be provided instruction using content-based language instructional methods in English to acclimate students to the school environment and to develop academic language skills, which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall be designed to incorporate the students' home languages and learning experiences and shall incorporate the cultural aspects of the students' backgrounds in accordance with TEC, §29.055(b).
  - (2) Linguistic.
    - (A) EB students in a bilingual program shall be provided targeted and intentional academic language instruction to develop proficiency in listening, speaking, reading, and writing in both English and the home or partner language. The instruction in both languages shall be structured to ensure that the students develop a strong literacy foundation and master the required essential knowledge and skills and higher-order thinking skills in all subjects, providing individualized linguistically accommodated content instruction commensurate with the students' language proficiency levels. The ELPS student expectations are provided for English development in conjunction with the TEKS.

- (B) EB students in an ESL program shall be provided targeted and intentional academic language instruction to develop proficiency in listening, speaking, reading, and writing in the English language. The instruction in academic content areas shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills in all subjects, providing individualized linguistically accommodated content instruction commensurate with the students' language proficiency levels. The ELPS student expectations are provided for English development in conjunction with the TEKS.
- (3) Cognitive.
  - (A) EB students in a bilingual program shall be provided instruction in reading and language arts, mathematics, science, and social studies in both the home or partner language and English, using content-based language instructional methods in either the home or partner language, English, or both, depending on the program model(s) implemented by the district. 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.
  - (B) EB students in an ESL program shall be provided instruction in English in reading and language arts, mathematics, science, and social studies using content-based language instructional methods. The instruction in all academic content areas shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills.
- (c) Bilingual programs shall be implemented through at least one of the following program models.
  - (1) Transitional bilingual/early exit is a bilingual program model in which identified EB students are served in both English and the students' home language and are prepared to meet reclassification criteria to be successful in English instruction with no second language acquisition supports not earlier than two or later than five years after the student enrolls in school. Instruction in this program is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061(b)(1), for the assigned grade level and content area. The goal of early-exit transitional bilingual education is for program participants to use their home language as a resource while acquiring full proficiency in English. This model provides instruction in literacy and academic content through the medium of the students' home language and English using content-based language instruction methods.
  - (2) Transitional bilingual/late exit is a bilingual program model in which identified EB students are served in both English and the students' home language and are prepared to meet reclassification criteria to be successful in English instruction with no second language acquisition supports not earlier than six or later than seven years after the student enrolls in school. Instruction in this program is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061(b)(2), for the assigned grade level and content area. The goal of late-exit transitional bilingual education is for program participants to use their home language as a resource while acquiring full proficiency in English. This model provides instruction in literacy and academic content through the medium of the students' home language and English through content-based language instruction.
  - (3) Dual language immersion/one-way is a bilingual/biliteracy program model in which identified EB students are served in both English and the program's partner language and are prepared to meet reclassification criteria in order to be successful in English instruction with no second language acquisition supports not earlier than six or later than seven years after the student enrolls in school. Instruction provided in the partner language and English is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061. When the instructional time for both the partner language and English is 50%, a paired-teaching arrangement may be utilized in which instruction provided in English may be delivered either by a teacher appropriately certified in bilingual education or by a different teacher certified in ESL in accordance with TEC, §29.061. The goal of one-way dual language immersion is for program participants to attain bilingualism.

and biliteracy in English and the partner language. This model provides ongoing instruction in literacy and academic content through content-based language instruction in English as well as the program's partner language, with at least half of the instruction delivered in the program's partner language for the duration of the program.

- (4) Dual language immersion/two-way is a bilingual/biliteracy program model in which identified EB students are integrated with non-EB students and are served in both English and the program's partner language and are prepared to meet reclassification criteria in order to be successful in English instruction with no second language acquisition supports not earlier than six or later than seven years after the student enrolls in school. Instruction provided in English and the partner language is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061. When the instructional time for both the partner language and English is 50%, a paired-teaching arrangement may be utilized in which instruction provided in English may be delivered either by a teacher appropriately certified in bilingual education or by a different teacher certified in ESL in accordance with TEC, §29.061. The goal of two-way dual language immersion is for program participants to attain bilingualism and biliteracy in English as well as the partner language. This model provides ongoing instruction in literacy and academic content through content-based language instruction in English and the partner language with at least half of the instruction delivered in the program's partner language for the duration of the program.
- (d) The ESL program shall be implemented through one of the following program models.
  - (1) An ESL/content-based program model is an English acquisition program that serves identified EB students through English instruction provided by a teacher appropriately certified in ESL under TEC, §29.061(c), using content-based language instruction methods in reading and language arts, mathematics, science, and social studies. The goal of content-based ESL is for program participants to attain full proficiency in English in order to participate equitably in school.
  - (2) An ESL/pull-out program model is an English acquisition program that serves identified EB students through English instruction using content-based language instruction methods provided by an appropriately certified ESL teacher under TEC, §29.061(c), in reading and language arts in a pull-out or inclusionary delivery setting. The goal of ESL pull-out is for program participants to attain full proficiency in English in order to participate equitably in school.
- (e) Except in the courses specified in subsection (f) of this section, content-based language instructional methods, which may involve the use of the students' home or the program's partner language, may be provided in any of the courses or electives required for promotion or graduation to assist program participants in mastering the essential knowledge and skills for the required subject(s). The use of content-based language instruction shall not impede the awarding of credit toward meeting promotion or graduation requirements.
- (f) In subjects such as art, music, and physical education, EB students shall participate with their non-EB peers in general education classes provided in the subjects. As noted in TEC, §29.055(d), elective courses included in the curriculum may be taught in a language other than English. The school district shall ensure that EB students enrolled in bilingual and ESL programs have a meaningful opportunity to participate with non-EB peers in all extracurricular activities.
- (g) The required bilingual or ESL program shall be provided to every EB student with parental approval until such time that the student meets reclassification criteria as described in §89.1226(i) of this title (relating to Testing and Classification of Students) or graduates from high school. Parental approval is required when the LPAC recommends continuing dual language immersion program participation beyond reclassification.

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

- (a) For each new student enrolling for the first time in a Texas public school in any grade from prekindergarten through Grade 12, the Texas Education Agency (TEA)-developed home language survey shall be administered. This home language survey will serve as the original and only home language survey throughout the student's educational experience in Texas public schools. School districts shall:
  - (1) ensure that the student's parent understands the language used in the survey and its implications;

- (2) require that the survey be signed by the student's parent for each student in prekindergarten through Grade 8 or by the student in Grades 9-12 as permitted under Texas Education Code, §29.056(a)(1);
  - (3) ensure the student's parent is aware of the benefits of bilingual and ESL programs; and
  - (4) maintain the original copy of the survey in the student's permanent record and transfer it to any subsequent Texas public school districts in which the student enrolls.
- (b) The TEA-developed home language survey shall be administered in English and a language that the parents can understand. The home language survey shall include the following questions.
  - (1) "Which languages are used at home?"
  - (2) "Which languages are used by the child at home?"
  - (3) "If the child had a previous home setting, which languages were used? If there was no previous home setting, answer Not Applicable (N/A)."
- (c) If any response on the home language survey indicates that a language other than English is or was used for communication, the student shall be tested in accordance with §89.1226 of this title (relating to Testing and Classification of Students).
- (d) For students previously enrolled in a Texas public school, the receiving district shall secure the student records, including the original home language survey and language proficiency assessment committee documentation as described in §89.1220(l) of this title (relating to Language Proficiency Assessment Committee (LPAC)), as applicable. All attempts to contact the sending district to request records shall be documented. Multiple attempts to obtain the student's original home language survey shall be made.
- (e) If a parent determines an error was made when completing the original home language survey, the parent may request a correction only if:
  - (1) the student has not yet been assessed for English proficiency; and
  - (2) corrections are made within two calendar weeks of the student's initial enrollment date in Texas public schools.

**§89.1220. Language Proficiency Assessment Committee (LPAC).**

- (a) School districts shall by local board policy establish and operate one or more Language Proficiency Assessment Committees (LPACs). The school district shall have on file a policy and procedures for the selection, appointment, and orientation of members of the LPAC(s).
- (b) The LPAC shall include an appropriately certified bilingual educator (for students served through a bilingual program), an appropriately certified English as a second language (ESL) educator (for students served through an ESL program), a parent of an emergent bilingual (EB) student participating in a bilingual or ESL program, and a campus administrator in accordance with Texas Education Code (TEC), §29.063.
- (c) In addition to the three required members of the LPAC, the school district may add other members to the committee. All required members of an LPAC must be present either in person or virtually to make individualized student decisions.
- (d) No parent serving on the LPAC shall be an employee of the school district.
- (e) A school district shall establish and operate a sufficient number of LPACs to enable them to discharge their duties within four calendar weeks of the enrollment of an EB student.
- (f) All members of the LPAC, including parents, shall be acting for the school district and shall observe all laws and rules governing confidentiality of information concerning individual students. The school district shall be responsible for the orientation of all members of the LPAC, including the parents. The LPAC may use alternative meeting methods, such as phone or video conferencing and the use of electronic signatures that adhere to district policy.

- (g) Upon a student's initial enrollment in Texas public schools, a student's transfer from a previous Texas public school district, and at the end of each school year, the LPAC shall review all pertinent information on all potential and identified EB students, including EB students with a parental denial of program participation, in accordance with §89.1226 of this title (relating to Testing and Classification of Students).
- (1) For students initially enrolling in Texas public schools, the LPAC shall:
    - (A) designate the language proficiency level of each EB student in accordance with the guidelines issued pursuant to §89.1226(b)-(f) of this title;
    - (B) recommend, subject to parental approval, the initial instructional placement of each EB student in the required bilingual or ESL program without restricting access due to scheduling, staffing, or class size constraints; and
    - (C) facilitate the participation of EB students in other programs for which they are eligible while ensuring full access to the language program required under TEC, §29.053.
  - (2) For transferring students previously enrolled in a Texas public school district, the LPAC shall:
    - (A) review permanent record and LPAC documentation from the previous Texas school district to determine if the student has been identified as an EB student based on the original home language survey and initial identification process;
    - (B) identify previous program participation with parental approval and recommend appropriate program placement based on student data and available program models or determine the need for monitoring of students who have previously met reclassification and are in their first two years of monitoring;
    - (C) inform parents who have previously denied program services of recommended bilingual or ESL programs available in the current district;
    - (D) review linguistic progress and academic achievement data of each EB student to inform instructional practices; and
    - (E) facilitate the participation of EB students in other programs for which they are eligible while ensuring full access to the language program required under TEC, §29.053.
  - (3) At the end of the school year, for all identified EB students, including EB students with a parental denial of program participation, the LPAC shall:
    - (A) review English language proficiency progress and academic achievement data in English for ESL program students;
    - (B) review English and home/partner language progress as well as academic achievement data in English and the home/partner language for bilingual program students;
    - (C) reclassify eligible EB students as English proficient in accordance with the criteria described in §89.1226(i) of this title;
    - (D) recommend exit from program of reclassified English proficient students, pending parental approval, or continuation of program participation for reclassified students participating in a dual language immersion one-way or two-way program model, according to the goals of the program; and
    - (E) prepare parental reports on student progress for all identified EB students to be provided to parents within the first 30 calendar days after the beginning of the next school year, which include data on linguistic and academic progress, benefits of bilingual or ESL program participation, and the criteria for reclassification as English proficient.
- (h) The LPAC shall give written notice to the student's parent, informing the parent that the student has been identified as an EB student and requesting approval to place the student in the required bilingual or ESL program not later than the 10th calendar day after the date of the student's identification in accordance with TEC, §29.056. The notice shall include information about the benefits of the recommended bilingual or ESL program and that it is an integral part of the school program.

- (i) Before the administration of the state criterion-referenced test each year, the LPAC shall determine the appropriate assessment option for each EB student as outlined in Chapter 101, Subchapter AA, of this title (relating to Commissioner's Rules Concerning the Participation of English Language Learners in State Assessments).
- (j) Pending completion of the identification process, receipt of LPAC documentation for transferring students, or parental approval of an identified EB student's placement into the bilingual or ESL program recommended by the LPAC, the school district shall place the student in the recommended program. Only EB students with parental approval for bilingual or ESL program participation will be included in the bilingual education allotment (BEA).
- (k) The LPAC shall monitor the academic progress of each student, including any student who previously had a parental denial of program participation, who has met criteria for reclassification in accordance with TEC, §29.056(g), for the first two years after reclassification. If the student earns a failing grade in a subject in the foundation curriculum under TEC, §28.002(a)(1), during any grading period in the first two school years after the student is reclassified, the LPAC shall determine, based on the student's English language acquisition needs, whether the student may require targeted instruction or, after careful consideration of multiple linguistic and academic data points, should be reconsidered for placement in a bilingual or ESL program. In accordance with TEC, §29.0561, the LPAC shall review the student's performance and consider, at a minimum, the following:
  - (1) the total amount of time the student was enrolled in a bilingual or ESL program;
  - (2) the student's grades each grading period in each subject in the foundation curriculum under TEC, §28.002(a)(1);
  - (3) the student's performance on each assessment instrument administered under TEC, §39.023(a) or (c);
  - (4) the number of credits the student has earned toward high school graduation, if applicable; and
  - (5) any disciplinary actions taken against the student under TEC, Chapter 37, Subchapter A (Alternative Settings for Behavior Management).
- (l) The student's permanent record shall contain documentation of all actions impacting the EB student.
  - (1) Documentation shall include:
    - (A) the original home language survey;
    - (B) the identification as an EB student;
    - (C) the designation of the student's level of language proficiency;
    - (D) the recommendation of program placement;
    - (E) parental approval or denial of placement into the program;
    - (F) the date of placement in the program;
    - (G) assessment information as outlined in Chapter 101, Subchapter AA, of this title;
    - (H) additional instructional linguistic accommodations provided to address the specific language needs of the student;
    - (I) the date of reclassification and the date of exit from the program with parental approval; and
    - (J) the results of monitoring for academic success, including students formerly identified as EB students, as required under TEC, §29.063(c)(4).
  - (2) Current documentation as described in paragraph (1) of this subsection shall be forwarded in the same manner as other student records to another school district in which the student enrolls.
- (m) A school district may place a student in or exit a student from a program without written approval of the student's parent if:

- (1) the student is 18 years of age or has had the disabilities of minority removed;
- (2) the parent provides approval through a phone conversation or e-mail that is documented in writing and retained; or
- (3) an adult who the school district recognizes as standing in parental relation to the student provides written approval. This may include a foster parent or employee of a state or local governmental agency with temporary possession or control of the student.

**§89.1226. Testing and Classification of Students.**

- (a) The single state-approved English language proficiency test for identification of emergent bilingual (EB) students described in subsection (c) of this section shall be used as part of the standardized, statewide identification process.
- (b) Within four calendar weeks of initial enrollment in a Texas public 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 an EB student and recommended for placement into the required bilingual or English as a second language (ESL) program in accordance with the criteria listed in subsection (f) of this section.
- (c) To identify EB students, 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 program at the elementary grades shall administer a language proficiency test in the home language of the student who is eligible to be served in the bilingual program. If the home 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 home language of the student, the school district shall determine the student's level of proficiency using informal oral language assessment measures.
- (e) All 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 placement into a bilingual or ESL program, a student shall be identified as an EB student using the following criteria.
  - (1) In prekindergarten through Grade 1, the student's score(s) from the listening and/or speaking components on the state-approved English language proficiency test for identification is/are below the level designated for indicating English proficiency.
  - (2) In Grades 2-12, the student's score(s) from the listening, speaking, reading, and/or writing components on the state-approved English language proficiency test for identification is/are below the level designated for indicating English proficiency.
- (g) A student shall be identified as EB if the student's beginning English language skills interfere with the completion of the English language proficiency assessment described in subsection (c) of this section.
- (h) The Language Proficiency Assessment Committee (LPAC), in conjunction with the admission, review, and dismissal (ARD) committee, shall identify a student as EB if the student's disabilities interfere with the completion of the English language proficiency assessment described in subsection (c) of this section. The bilingual or ESL program placement recommendation shall be determined by the LPAC, in conjunction with the ARD committee, in accordance with §89.1220(f) of this title (relating to Language Proficiency Assessment Committee (LPAC)), ensuring access to both the bilingual or ESL program and the special education and related services needed to provide a free, appropriate public education as identified in the student's individualized education program.

- (i) An EB student may be reclassified as English proficient only at the end of the school year in which a student routinely demonstrates readiness for reclassification as English proficient and the ability to successfully participate in grade level content instruction that is delivered with no second language acquisition supports. EB students, including those with parental denials, are eligible for linguistic or non-linguistic based designated supports or accommodations on the state criterion-referenced English language arts and reading assessment instrument when recommended by the LPAC or any other committee. These designated supports or accommodations do not prevent an EB student from meeting reclassification criteria. An EB student reclassifies as English proficient when all three of the following criteria are met:
  - (1) a composite proficiency rating, which includes ratings in the areas of listening, speaking, reading, and writing, on the state-approved English language proficiency test for reclassification that is designated for indicating English proficiency;
  - (2) passing standard met on the English language arts and reading assessment instrument under Texas Education Code (TEC), §39.023(a) or (c), or, for students at grade levels not assessed by the aforementioned assessment instruments, 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) An EB student may not be reclassified as English proficient in prekindergarten or Kindergarten. A school district shall ensure that EB students are prepared to meet academic standards required by TEC, §28.0211.
- (k) For EB students who are also eligible for special education services, the standardized process for student reclassification is followed in accordance with applicable provisions of subsection (i) of this section. However, annual meetings to review student progress and make recommendations for reclassification shall be made in all instances by the LPAC, in conjunction with the ARD committee, in accordance with §89.1230(b) of this title (relating to Eligible Students with Disabilities). Additionally, the LPAC, in conjunction with the ARD committee, shall determine participation and designated support or accommodation decisions on state criterion-referenced and English language proficiency assessments that differentiate between language proficiency and disabling conditions in accordance with §89.1230(a) of this title.
- (l) For an EB student with a significant cognitive disability, the LPAC, in conjunction with the ARD committee, may recommend that the state's criterion-referenced and English language proficiency assessments used for reclassification are not appropriate because of the nature of the student's disabling condition. In these cases, the LPAC, in conjunction with the ARD committee, may recommend that the student take the state's alternate criterion-referenced and alternate English language proficiency assessments. Additionally, the LPAC, in conjunction with the ARD committee, may utilize the individualized reclassification process to determine appropriate performance standard requirements for the state standardized reading assessment and English language proficiency assessment by language domain under subsection (i)(1) of this section and utilize the results of a subjective teacher evaluation using the state's standardized alternate rubric.
- (m) Notwithstanding §101.101 of this title (relating to Group-Administered Tests), all tests used for the purpose of identification and reclassification of students and approved by TEA shall be re-normed at least every eight years.

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

- (a) A one-way or two-way dual language immersion (DLI) program model shall address all curriculum requirements specified in Chapter 74, Subchapter A, of this title (relating to Required Curriculum) in the program's partner language and English.
- (b) A DLI program model shall be a full-time program of academic instruction in the program's partner language and English for all program participants, emphasizing the participation of identified emergent bilingual (EB) students. Access to the DLI program shall not be restricted based on race, creed, color, religious affiliation, age, or disability.

- (c) A DLI program model shall provide equitable, authentic resources in English and the program's partner language to ensure development of bilingualism and biliteracy.
- (d) The district shall develop a language allocation plan that ensures a minimum of 50% of content area instructional time is provided in the program's partner language for the duration of the program.
- (e) Program implementation shall:
  - (1) begin at prekindergarten, Kindergarten, or Grade 1, as applicable, according to the district's earliest grade level provided;
  - (2) continue without interruption incrementally through the elementary grades;
  - (3) consider expansion to middle school and high school whenever possible; and
  - (4) include participation of former emergent bilingual students who have reclassified as English proficient for the duration of the program.
- (f) A DLI program model shall be developmentally appropriate and based on current best practices identified in research. Particularly, EB students shall not be restricted access to a one-way or two-way DLI program model based on any linguistic or academic achievement measures in the program's partner language or English.

**§89.1228. Two-Way Dual Language Immersion Program Model Implementation.**

- (a) Student enrollment in a two-way dual language immersion (DLI) program model is optional for non-emergent bilingual (EB) students in accordance with §89.1233(a) of this title (relating to Participation of Non-Emergent Bilingual Students).
- (b) A two-way DLI program model shall fully disclose candidate selection criteria and ensure that access to the program is not based on race, creed, color, religious affiliation, age, or disability. Additionally, identified and reclassified EB students and non-EB students shall not be restricted access to the two-way DLI program model based on any linguistic or academic achievement measures in the program's partner language or English.
- (c) A school district implementing a two-way DLI program model shall develop a policy for enrollment and continuation for students in this program model. The policy shall address:
  - (1) equitable access, including the program's intention to maintain a ratio of 50% EB students to 50% non-EB students and have no more than two-thirds speakers of the partner language to one-third speakers of English in each classroom;
  - (2) support of program benefits and goals as stated in §89.1210 of this title (relating to Program Content and Design);
  - (3) the district's commitment to providing equitable access to services for EB students and to ensuring continuity of program for all program participants;
  - (4) the program's language allocation plan for the grade levels in which the program will be implemented; and
  - (5) expectations for students, families, and district and campus stakeholders.
- (d) A school district implementing a two-way DLI program model shall obtain written parental approval as follows.
  - (1) For EB students, written parental approval is obtained in accordance with §89.1240 of this title (relating to Parental Authority and Responsibility).
  - (2) For non-EB students, written parental approval is obtained through a school district-developed process.
- (e) A school district implementing a two-way DLI program model shall determine the appropriate assessment option for program participants as follows.

- (1) For EB students, the Language Proficiency Assessment Committee (LPAC) shall convene before the administration of the state criterion-referenced test each year to determine the appropriate assessment option for each EB student in accordance with §89.1220(i) of this title (relating to Language Proficiency Assessment Committee (LPAC)).
- (2) For reclassified EB students and non-EB students, the appropriate assessment option for the administration of the state criterion-referenced test each year is determined by the LPAC or through a school district-developed process.

**§89.1229. General Standards for Recognition of Dual Language Immersion Program Models.**

- (a) Campus recognition. A school district may recognize one or more of its campuses that implement an exceptional dual language immersion (DLI) program model if the campus meets all of the following criteria. The school shall:
  - (1) meet the minimum requirements stated in §89.1227 of this title (relating to Minimum Requirements for Dual Language Immersion Program Model);
  - (2) receive an acceptable performance rating in the state accountability system; and
  - (3) not have a bilingual and/or English as a second language program identified in any stage of intervention under the state's accountability system.
- (b) Student recognition. An individual student participating in a DLI program model is eligible for local school district recognitions, including a performance acknowledgement in accordance with §74.14 of this title (relating to Performance Acknowledgments).

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

- (a) For students with disabilities, school districts shall utilize the state's criteria for identification of emergent bilingual (EB) students as described in §89.1226(f) of this title (relating to Testing and Classification of Students) and shall establish placement procedures that ensure that the placement recommendation by the Language Proficiency Assessment Committee (LPAC), in conjunction with the admission, review, and dismissal (ARD) committee, in a bilingual or English as a second language program is not refused based on the student's disabling condition.
- (b) LPAC members shall meet in conjunction with ARD committee members to review progress and provide recommendations regarding the educational needs of each EB student who also qualifies for services in the school district's special education program.

**§89.1233. Participation of Non-Emergent Bilingual Students.**

- (a) School districts shall fulfill their obligation to provide access to the required bilingual or English as a second language (ESL) program to emergent bilingual (EB) students in accordance with Texas Education Code (TEC), §29.053.
- (b) School districts may enroll non-EB students in the bilingual education or ESL program in accordance with TEC, §29.058.
- (c) For participation of non-EB students in two-way dual language immersion programs, see §89.1228(c)(1) of this title (relating to Two-Way Dual Language Immersion Program Model Implementation). For all other program models, the number of participating non-EB students shall not exceed 40% of the number of students enrolled in those bilingual or ESL program models district-wide in accordance with TEC, §29.058.

**§89.1235. Facilities.**

- (a) Bilingual and English as a second language (ESL) programs shall be located in the public schools of the school district with equitable access to all educational resources rather than in separate facilities.
- (b) In order to provide the required bilingual or ESL programs, school districts may cluster the programs at designated facilities within the school district.

- (c) Recent immigrant emergent bilingual students shall not remain enrolled in newcomer centers for longer than two years.

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

(a) Identification and placement approval.

- (1) The parent shall be notified in English and the parent's home language that their child has been identified as an emergent bilingual (EB) student and recommended for placement in the required bilingual or English as a second language (ESL) program using the Texas Education Agency (TEA)-developed identification and approval of placement letter.
- (2) The parent shall be provided information describing the bilingual or ESL program recommended, its benefits and goals, and its being an integral part of the school program to ensure that the parent understands the purposes and content of the program and their parental rights.
- (3) The placement of a student in the bilingual or ESL program shall be approved in writing by the student's parent, or through allowable alternatives described in §89.1220(m) of this title (relating to Language Proficiency Assessment Committee (LPAC)), in order to have the student included in the bilingual education allotment (BEA).
- (4) The parent's approval shall be considered valid for the student's continued participation in the required bilingual or ESL program until:
  - (A) the student meets the reclassification criteria described in §89.1226(i) of this title (relating to Testing and Classification of Students);
  - (B) the student graduates from high school; or
  - (C) a change occurs in program placement. A change between bilingual and ESL program placement requires new parental approval using the TEA-developed continuation of language program services letter.
- (5) If a parent denies program placement at any point, the TEA-developed parental denial of program services letter shall be used to ensure parents are informed of the implications of program denial, including understanding that the child will continue to be identified as an EB student and will continue to be assessed annually using the Texas English Language Proficiency Assessment System (TELPAS) until reclassification criteria have been met.

(b) Reclassification and exit approval.

- (1) The school district shall use the TEA-developed parent notification of reclassification and approval of program exit letter to give written notification to the student's parent of the student's reclassification as English proficient and acquire written approval for their exit from the bilingual or ESL program as required under Texas Education Code, §29.056(a).
- (2) The school district shall use the TEA-developed parent notification of reclassification and option to continue in a dual language immersion program letter to give written notification to the student's parent of the student's reclassification as English proficient and acquire written approval for continued program participation as an English proficient student.
- (3) Students meeting reclassification criteria who have been recommended for exit by the Language Proficiency Assessment Committee (LPAC) may only exit the bilingual or ESL program with parental approval.

(c) Appeals.

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

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

- (a) School districts shall take all reasonable affirmative steps to assign appropriately certified teachers to the required bilingual and English as a second language (ESL) programs in accordance with Texas Education Code (TEC), §29.061, concerning bilingual and ESL program teachers. School districts that are unable to secure a sufficient number of appropriately certified bilingual and/or ESL teachers to provide the required programs may request activation of the appropriate permits in accordance with Chapter 230 of this title (relating to Professional Educator Preparation and Certification).
- (b) School districts that are unable to employ a sufficient number of teachers, including part-time teachers, who meet the requirements of subsection (a) of this section for the bilingual and ESL programs shall apply on or before November 1 for an exception to the bilingual program or a waiver for the ESL program as provided in §89.1207(a) and (b) of this title (relating to Bilingual Exceptions and English as a Second Language Program Waivers).
- (c) Teachers assigned to the bilingual or ESL program may receive salary supplements through bilingual education allotment funds as authorized by TEC, §48.105.
- (d) School districts may compensate teachers and aides assigned to bilingual or ESL programs for participation in virtual, face-to-face, and hybrid professional development outside of regular work hours designed to increase their skills or lead to bilingual or ESL certification.
- (e) The commissioner of education shall encourage school districts to cooperate with colleges and universities to provide training for teachers assigned to bilingual or ESL programs.
- (f) The Texas Education Agency shall develop, in collaboration with education service centers, resources for implementing bilingual and ESL training programs. The materials shall provide a framework for:
  - (1) developmentally appropriate bilingual and ESL programs for prekindergarten through Grade 12;
  - (2) affectively, linguistically, and cognitively appropriate instruction in bilingual and ESL programs in accordance with §89.1210(b)(1)-(3) of this title (relating to Program Content and Design); and
  - (3) developmentally appropriate programs for emergent bilingual students identified with multiple needs and/or exceptionalities.

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

- (a) Criteria. Summer school programs that are provided under Texas Education Code (TEC), §29.060, for emergent bilingual (EB) students who will be eligible for admission to Kindergarten or Grade 1 at the beginning of the next school year shall be implemented in accordance with this section.
- (b) Purpose of summer school programs.
  - (1) EB students, including those also receiving special education services, shall have an opportunity to receive targeted instruction designed to prepare them to be successful in Kindergarten and Grade 1.
  - (2) Instruction shall focus on language development and essential knowledge and skills appropriate to the level of the student, including instruction in English and the home or partner language according to the program model.
  - (3) The program shall address the affective, linguistic, and cognitive needs of EB students in accordance with §89.1210(b) of this title (relating to Program Content and Design).
- (c) Establishment of, and eligibility for, the program.
  - (1) Each school district required to offer a bilingual or English as a second language (ESL) program in accordance with TEC, §29.053, shall offer the summer program.
  - (2) To be eligible for enrollment:
    - (A) a student shall be eligible for admission to Kindergarten or to Grade 1 at the beginning of the next school year and shall be identified as an EB student; and

- (B) a parent shall have approved placement of the EB student in the required bilingual or ESL program following the procedures described in §89.1220(g) of this title (relating to Language Proficiency Assessment Committee (LPAC)) and §89.1226(b)-(f) of this title (relating to Testing and Classification of Students) prior to participation in the summer school program.
- (d) Operation of the program.
  - (1) Enrollment is optional.
  - (2) School districts that operate on a semester system shall offer 120 hours of instruction:
    - (A) during the period that school is recessed for the summer; and
    - (B) on a one-half day basis for eight weeks or on a similar schedule approved by the board of trustees.
  - (3) School districts that operate on a system other than a semester system shall offer 120 hours of instruction on a schedule approved by the board of trustees.
  - (4) The student/teacher ratio for the program district-wide shall not exceed 18 to 1.
  - (5) A school district is not required to provide transportation for the summer program.
  - (6) Employees providing summer school instruction shall possess certification as required in TEC, §29.061, and §89.1245 of this title (relating to Staffing and Staff Development).
  - (7) Reporting of student progress shall be approved 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.
  - (8) A school district may join with other school districts in cooperative efforts to plan and implement programs.
  - (9) The summer school program shall not substitute for any other program required to be provided during the regular school term, including those required in TEC, §29.153.
- (e) Funding and records for programs.
  - (1) A school district shall use state and local funds for program purposes.
    - (A) Available funds appropriated by the legislature for the support of summer school programs provided under TEC, §29.060, shall be allocated to school districts in accordance with this subsection.
    - (B) 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 1. The numbers of students required to earn units shall be established by the commissioner. The allotment per unit shall be determined by the commissioner based on funds available.
    - (C) Any school district required to offer the program under paragraph (2)(A) of this subsection that has fewer than 10 students district-wide desiring to participate is not required to operate the program. However, those school districts shall document that they have encouraged students' participation in multiple ways.
    - (D) Reimbursement payments to school districts for summer school programs shall be based on units employed. This information shall be submitted in a manner and according to a schedule established by the commissioner in order for a school district to be eligible for funding.
  - (2) A school district shall maintain records of eligibility, attendance, and progress of students.

**§89.1265. Program Evaluation.**

- (a) All school districts required to implement a bilingual or English as a second language (ESL) program shall conduct an annual evaluation in accordance with Texas Education Code (TEC), §29.053, collecting a full range of data to determine program effectiveness to ensure student academic success. The annual evaluation report shall be presented to the board of trustees before November 1 of each year and the report shall be retained at the school district level in accordance with TEC, §29.062.
- (b) Annual school district reports of educational performance shall reflect:
  - (1) the academic progress in the language(s) of instruction for emergent bilingual (EB) students by bilingual and/or ESL program model;
  - (2) the extent to which EB students are developing English proficiency by bilingual and/or ESL program model, including proficiency in the partner language for students participating in a dual language immersion program model;
  - (3) the number of students who have been reclassified as English proficient and their continued academic progress after reclassification; and
  - (4) the number of teachers and aides trained and the frequency, scope, and results of the professional development in approaches and strategies that support second language acquisition.
- (c) In addition, for those school districts that filed in the previous year and/or will be filing a bilingual exception and/or ESL waiver in the current year, the annual district report of educational performance shall also reflect:
  - (1) the number of teachers for whom a bilingual exception or ESL waiver was/is being filed;
  - (2) the number of teachers for whom a bilingual exception or ESL waiver was filed in the previous year who successfully obtained certification;
  - (3) the frequency and scope of a comprehensive professional development plan, implemented as required under §89.1207 of this title (relating to Bilingual Exceptions and English as a Second Language Program Waivers), and results of such plan if a bilingual exception and/or ESL waiver was filed in the previous school year; and
  - (4) the number of students under the bilingual exception and/or ESL waiver who were/are temporarily served with alternative methods.
- (d) School districts shall report to parents their child's English proficiency development as a result of participation in the program offered to EB students.
- (e) In alignment with the district improvement plan, 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 TEC, §11.253, for the purpose of improving student performance for EB students.