

The Texas Education Agency (TEA) proposes amendments to §§101.1001, 101.1003, 101.1005, and 101.1007, concerning the participation of English language learners in state assessments. The proposed amendments would align the rules with existing state and federal policies regarding the assessment of emergent bilingual (EB) students.

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

Section 101.1001, Scope of Rules, defines which students the provisions of Division 1 of Chapter 101, Subchapter AA, apply to. The proposed amendment would clarify 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 proposed amendment would clarify 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 proposed amendment would update the rules regarding the assessment options currently available. Specifically, subsection (a) would be updated to clarify that only EB students in Grade 3 or higher are eligible to participate in state academic assessments.

Section 101.1005(b) would be updated to clarify 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) would be clarified and re-numbered as new paragraph (2).

Section 101.1005(f) would be eliminated to clarify that all EB students, including those whose parents or guardians decline bilingual services, have access to appropriate assessments and accommodations. Subsection (h) would be eliminated as 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 proposed amendment would update the language to include "EB students."

FISCAL IMPACT: Iris Tian, deputy commissioner for analytics, assessment, and reporting, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand regulations by broadening the assessment options for EB students. Additionally, the proposed rulemaking would increase the number of individuals subject to the rules' applicability by repealing an existing limitation.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Tian has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that all EB students take the appropriate assessments and have access to the available accommodations. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins June 21, 2024, and ends July 22, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 21, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §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 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 [~~English learner (EL)~~], as defined by [~~the~~] 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 [~~of limited English proficiency~~], shall be administered state [~~state-identified~~] English language proficiency assessments annually in listening, speaking, reading, and writing to fulfill state requirements under [~~the~~] 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 [~~ELL~~] 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 [~~ELL~~] 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 [~~English language learner (ELL)~~] in accordance with this subchapter. For each EB student [~~ELL~~] 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 [~~ELL~~] shall participate in the Grades 3-8 and end-of-course assessments, with or without allowable testing accommodations, as required by [~~the~~] Texas Education Code (TEC), §39.023(a) and (c) [~~§39.023(e)~~]. Except as specified in paragraphs (1) and (2) [~~(1)-(3)~~] of this subsection, an EB student [~~ELL~~] 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.~~
- ~~[(1) A Spanish-speaking ELL in Grades 3-5 may be administered the state's Spanish-version assessment if an assessment in Spanish will provide the most appropriate measure of the student's academic progress.]~~
- ~~[(2) An ELL in Grade 3 or higher may be administered the linguistically accommodated English version of the state's mathematics, science, or social studies assessment if:]~~
- ~~[(A) a Spanish-version assessment does not exist or is not the most appropriate measure of the student's academic progress;]~~
- ~~[(B) 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); and]~~
- ~~[(C) the student 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.]~~
- ~~[(3) In certain cases, an ELL who receives special education services may, as a result of his or her particular disabling condition, qualify to be administered an alternate assessment instrument based on alternative achievement standards.]~~
- (c) In accordance with ~~the~~ 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 ~~the~~ 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 ~~the~~ 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 ~~[ELL]~~ is receiving special education services under ~~the~~ TEC, Chapter 29, Subchapter A, determine and document any allowable testing accommodations for assessments under this section in accordance with administrative procedures established by ~~the~~ TEA.
- ~~[(f) An ELL whose parent or guardian has declined the services required by the TEC, Chapter 29, Subchapter B, is not eligible for special assessment, accommodation, or accountability provisions made available to ELLs on the basis of limited English proficiency.]~~
- (f) ~~(g)~~ School districts may administer the assessment of academic skills in Spanish to a student who is not identified as an EB student ~~[limited English proficient]~~ 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.
- ~~[(h) Policies for including the academic performance of an ELL in state and federal accountability measures, which will take into account the second language acquisition developmental needs of this student~~

~~population, shall be delineated in the official TEA publications required by Chapter 97 of this title (relating to Planning and Accountability).]~~

§101.1007. Assessment Provisions for Graduation.

- (a) Although an emergent bilingual (EB) student [~~English language learner (ELL)~~] 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 [~~provisions~~] under subsection (b) of this section shall apply to an EB student [~~ELL~~] enrolled in an English I course or an English for Speakers of Other Languages (ESOL) I course if the EB student [~~ELL~~] :
- (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 [~~in which the student is enrolled~~] , an EB student [~~ELL~~] 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.