

## Chapter 101. Assessment

### Subchapter AA. Commissioner's Rules Concerning the Participation of English Language Learners in State Assessments

*Statutory Authority: The provisions of this Subchapter AA issued under the Texas Education Code, §§39.023, 39.025, and 39.027, unless otherwise noted.*

#### Division 1. Assessments of English Language Proficiency and Academic Content for English Language Learners

##### §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 days during a school year is considered to have been enrolled in a U.S. school for that school year.

*Source: The provisions of this §101.1001 adopted to be effective December 22, 2011, 36 TexReg 8521; amended to be effective March 5, 2014, 39 TexReg 1376.*

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

- (a) In Kindergarten-Grade 12, an English learner (EL), as defined by the Texas Education Code (TEC), Chapter 29, Subchapter B, as a student of limited English proficiency, shall be administered 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 EL 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, 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 EL 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.

*Statutory Authority: The provisions of this §101.1003 issued under the Texas Education Code, §39.027; the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(G); and 34 Code of Federal Regulations, §200.6(h).*

*Source: The provisions of this §101.1003 adopted to be effective December 22, 2011, 36 TexReg 8521; amended to be effective May 31, 2020, 45 TexReg 3439.*

**§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 English language learner (ELL) in accordance with this subchapter. For each 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 ELL shall participate in the Grades 3-8 and end-of-course assessments as required by the Texas Education Code (TEC), §39.023(c). Except as specified in paragraphs (1)-(3) of this subsection, an ELL shall be administered the general form of the English-version state assessment.
- (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 alternative 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 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.
- (g) School districts may administer the assessment of academic skills in Spanish to a student who is not identified as 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).

*Statutory Authority: The provisions of this §101.1005 issued under the Texas Education Code, §39.023 and §39.027.*

*Source: The provisions of this §101.1005 adopted to be effective December 22, 2011, 36 TexReg 8521; amended to be effective March 27, 2013, 38 TexReg 1972.*

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

- (a) Although an 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, special provisions under subsection (b) of this section shall apply to an ELL enrolled in an English I course or an English for Speakers of Other Languages (ESOL) I course if the 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 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.

*Source: The provisions of this §101.1007 adopted to be effective December 22, 2011, 36 TexReg 8521; amended to be effective March 5, 2014, 39 TexReg 1376.*