

The Texas Education Agency (TEA) proposes amendments to §§89.1201, 89.1203, 89.1210, 89.1215, 89.1220, 89.1226, 89.1227, 89.1228, 89.1230, and 89.1235, concerning the state plan for educating emergent bilingual students. The proposed amendments would align with state and federal regulations by updating existing definitions and requirements to reflect current statutory terminology; clarify procedures related to the identification, placement, instruction, reclassification, monitoring, and reporting of emergent bilingual students; make technical and clarifying updates to improve the consistency, structure, and application of the rules; and comply with all applicable federal and state executive orders.

BACKGROUND INFORMATION AND JUSTIFICATION: The proposed amendments to 19 TAC §§89.1201, 89.1210, 89.1227, 89.1228, and 89.1235 would update terminology to comply with federal and state executive orders.

The proposed amendment to §89.1203 would add a definition for dually identified emergent bilingual students who are eligible for and receiving special education and related services to align with state guidance.

The proposed amendment to §89.1215 would align with state and federal regulations to clarify that American Sign Language, when identified on the home language survey, will no longer, by itself, initiate the identification process for potential emergent bilingual students.

The proposed amendment to §89.1220 would clarify procedures for out-of-state transfer students previously identified as emergent bilingual in Texas to align with state and federal regulations.

The proposed amendment to §89.1226 would update state policy language to align with state and federal regulations. Language would be stricken to remove the exclusion of prekindergarten and kindergarten students from eligibility for reclassification at the end of the academic year, consistent with federal requirements that all identified emergent bilingual students have the opportunity to demonstrate English language proficiency annually.

The proposed amendment to §89.1230 would update terminology related to dually identified emergent bilingual students who receive special education services.

FISCAL IMPACT: Jennifer Alexander, associate commissioner for special populations and student supports, has determined that for the first five-year period the proposal is in effect, there would be no direct fiscal impact to state government. The amendments may result in variable and indirect costs for school districts and open-enrollment charter schools due to reclassification of some prekindergarten and kindergarten students up to two years earlier than previously projected, which could affect bilingual education allotment funding. However, any impact would vary by district based on student demographics, enrollment patterns, and reclassification outcomes and cannot be reliably estimated.

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 may impose a cost on local government due to changes in projected bilingual education allotment funding. However, the proposal is exempt from the requirements of Texas Government Code, §2001.0045, because the rules are necessary to receive a source of federal funds or to comply with federal law.

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 conducted a Government Growth Impact assessment for this proposed rulemaking. During the first five years the rules are in effect, the amendments would expand and limit existing regulations by reorganizing and updating the commissioner's rules governing bilingual education and

special language programs, refining alignment with statute and applicable federal and state executive orders, providing greater specificity regarding program implementation for emergent bilingual students, and making non-substantive revisions to improve clarity and usability.

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 repeal an existing regulation; would not increase or 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. Alexander 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 to improve clarity, consistency, and transparency in the statewide administration of bilingual education and special language programs by supporting uniform identification, placement, and monitoring of emergent bilingual students; aligning commissioner's rules with current statutory terminology and federal requirements; and enhancing the clarity and usability of the rules for districts and stakeholders. 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: TEA requests public comments on the proposal, including, per Texas Government Code, §2001.024(a)(8), information related to the cost, benefit, or effect of the proposed rule and any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person. The public comment period on the proposal begins August 7, 2026, and ends September 7, 2026. 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 August 7, 2026. A form for submitting public comments is available on the TEA website at <https://tea.texas.gov/laws-and-rules/commissioner-rules-tac/proposed-commissioner-education-rules>.

STATUTORY AUTHORITY. The amendments are proposed 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, as amended by House Bill (HB) 2 and Senate Bill 2185, 89th Texas Legislature, Regular Session, 2025, which establishes the criteria for exceptions; TEC, §29.055, which establishes the criteria for program content and the method of instruction; TEC, §29.056, as amended by HB 8, 89th Texas Legislature, Second Called Session, 2025, 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 reporting requirements.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§29.051; 29.052; 29.053; 29.054, as amended by House Bill (HB) 2 and Senate Bill 2185, 89th Texas Legislature, Regular Session, 2025; 29.055; 29.056, as amended by HB 8, 89th Texas Legislature, Second Called Session, 2025; 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 fully [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 fully [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) Dually identified--A student who is identified as an emergent bilingual and is eligible for and receiving special education and related services.
- (9) ~~(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.
- (10) ~~(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."
- (11) ~~(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 Chapter 120, Subchapter B, [§74.4(a)(1)] of this title (relating to English Language Proficiency Standards).
- (12) ~~(11)~~ English proficient student--A former EB student who has met reclassification as English proficient by the LPAC.
- (13) ~~(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.
- (14) ~~(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.
- (15) ~~(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.
- (16) ~~(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.
- (17) ~~(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, §29.063 [~~§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.

- (18) [~~(17)~~] Non-emergent bilingual student--A student who has never been classified as an EB student by an LPAC.
- (19) [~~(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.
- (20) [~~(19)~~] Parent--The parent or legal guardian of the student in accordance with TEC, §29.052(2).
- (21) [~~(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.
- (22) [~~(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.
- (23) [~~(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.
- (24) [~~(23)~~] School district-- The term school district includes an open-enrollment charter school or a district of innovation.

§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 family [cultural] heritages. The program shall be designed to consider the students' learning experiences and shall incorporate various [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 family [cultural] heritages. The program shall be designed to incorporate the students' home languages and learning experiences and shall incorporate various [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) The bilingual program ~~[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 fully ~~[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 fully ~~[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. The ~~[This]~~ home language survey completed at initial enrollment shall ~~[will]~~ serve as the student's ~~[original and only]~~ home language survey of record throughout the student's enrollment ~~[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) Except as provided in subsection (d) of this section, if ~~[H]~~ 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) If American Sign Language (ASL) is a response indicated on the home language survey, it alone does not trigger the identification process in accordance with §89.1226 of this title. Responses to the home language

survey questions described in subsection (b) of this section must also indicate a language other than English in addition to ASL.

- (e) ~~(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.
- (f) ~~(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 a Texas public school ~~[schools]~~, a student's transfer from a previous Texas public school district, transfer from an out-of-state 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 in-state students or for a student transferring from an out-of-state public school district who was previously enrolled in a Texas public school district within the last 12 months, 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) For a student transferring from an out-of-state public school district who was previously identified as an EB student in a Texas public school district and more than 12 months has elapsed--measured from the first day of the current school year--since their EB identification in Texas, the LPAC shall review permanent record and LPAC documentation from the previous Texas school district to identify previous program participation, and:
- (A) if records indicate the student's parents previously denied program participation in Texas, the district will inform the parent of bilingual or ESL programs available in the current district and distribute a new home language survey only if the parent consents to such distribution; or
 - (B) if records from the previous Texas school district indicate the student did participate in a program in Texas, the LPAC shall review records from the most recent out-of-state school in which the student was enrolled to determine if the student was reclassified under that state's criteria.
 - (i) If the student met reclassification criteria in the other state, the LPAC shall determine the need for monitoring if the student would be in their first two years of monitoring under Texas standards.
 - (ii) If the student did not meet reclassification criteria in the other state, or if the records are unclear or unavailable, the district shall begin the identification process again with a new home language survey.
- (4) ~~(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 disability(ies) ~~[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 enrolled in prekindergarten-Grade 12 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 . For prekindergarten students, the composite proficiency rating includes ratings in the areas of listening and speaking ;
 - (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 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.~~
- (j) ~~(4k)~~ 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.
- (k) An EB student with the most significant cognitive disability who is receiving special education services may be eligible to take the state's alternative criterion-referenced and alternative English language proficiency assessments. Dually identified students, like their non-disabled EB peers, are eligible to be reclassified as English proficient when they meet EB reclassification criteria at the end of the school year. The annual review of the student progress and decision to reclassify should be determined through focused coordination and collaboration of the LPAC and ARD committees.
- ~~(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.~~
- (l) ~~(4m)~~ 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 educational access and [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) program ~~[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 required ~~[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.

§89.1230. Eligible Dually Identified 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 disability ~~[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 dually identified ~~[EB]~~ student ~~[who also qualifies for services in the school district's special education program]~~ .

§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.