

ATTACHMENT I

Statutory Citations Relating to Revisions to 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter BB, Commissioner's Rules Concerning State Plan for Educating English Language Learners

Texas Education Code (TEC), §29.051, State Policy:

English is the basic language of this state. Public schools are responsible for providing a full opportunity for all students to become competent in speaking, reading, writing, and comprehending the English language. Large numbers of students in the state come from environments in which the primary language is other than English. Experience has shown that public school classes in which instruction is given only in English are often inadequate for the education of those students. The mastery of basic English language skills is a prerequisite for effective participation in the state's educational program. Bilingual education and special language programs can meet the needs of those students and facilitate their integration into the regular school curriculum. Therefore, in accordance with the policy of the state to ensure equal educational opportunity to every student, and in recognition of the educational needs of students of limited English proficiency, this subchapter provides for the establishment of bilingual education and special language programs in the public schools and provides supplemental financial assistance to help school districts meet the extra costs of the programs.

TEC, §29.052, Definitions:

- (a) "Student of limited English proficiency" means a student whose primary language is other than English and whose English language skills are such that the student has difficulty performing ordinary classwork in English.
- (b) "Parent" includes a legal guardian of a student.

TEC, §29.053, Establishment of Bilingual Education and Special Language Programs:

- (a) The agency shall establish a procedure for identifying school districts that are required to offer bilingual education and special language programs in accordance with this subchapter.
- (b) Within the first four weeks following the first day of school, the language proficiency assessment committee established under Section 29.063 shall determine and report to the board of trustees of the district the number of students of limited English proficiency on each campus and shall classify each student according to the language in which the student possesses primary proficiency. The board shall report that information to the agency before November 1 each year.
- (c) Each district with an enrollment of 20 or more students of limited English proficiency in any language classification in the same grade level shall offer a bilingual education or special language program.
- (d) Each district that is required to offer bilingual education and special language programs under this section shall offer the following for students of limited English proficiency:
 - (1) bilingual education in kindergarten through the elementary grades;
 - (2) bilingual education, instruction in English as a second language, or other transitional language instruction approved by the agency in post-elementary grades through grade 8; and
 - (3) instruction in English as a second language in grades 9 through 12.

TEC, §29.054, Exception:

- (a) If a program other than bilingual education must be used in kindergarten through the elementary grades, documentation for the exception must be filed with and approved by the agency.
- (b) An application for an exception may be filed with the agency when a district is unable to hire a sufficient number of teachers with teaching certificates appropriate for bilingual education instruction to staff the required program. The application must be accompanied by:
 - (1) documentation showing that the district has taken all reasonable affirmative steps to secure teachers with teaching certificates appropriate for bilingual education instruction and has failed;
 - (2) documentation showing that the district has affirmative hiring policies and procedures consistent with the need to serve limited English proficiency students;
 - (3) documentation showing that, on the basis of district records, no teacher having a teaching certificate appropriate for bilingual instruction or emergency credentials has been unjustifiably denied employment by the district within the past 12 months; and
 - (4) a plan detailing specific measures to be used by the district to eliminate the conditions that created the need for an exception.
- (c) An exception shall be granted under this section on an individual district basis and is valid for only one year. Application for an exception for a second or succeeding year must be accompanied by the documentation prescribed by Subsection (b).
- (d) During the period for which a district is granted an exception under this section, the district must use alternative methods approved by the agency to meet the needs of its students of limited English proficiency, including hiring teaching personnel under a bilingual emergency permit.

TEC, §29.055, Program Content; Method of Instruction:

- (a) A bilingual education program established by a school district shall be a full-time program of dual-language instruction that provides for learning basic skills in the primary language of the students enrolled in the program and for carefully structured and sequenced mastery of English language skills. A program of instruction in English as a second language established by a school district shall be a program of intensive instruction in English from teachers trained in recognizing and dealing with language differences.
- (b) A program of bilingual education or of instruction in English as a second language shall be designed to consider the students' learning experiences and shall incorporate the cultural aspects of the students' backgrounds.
- (c) In subjects such as art, music, and physical education, students of limited English proficiency shall participate fully with English-speaking students in regular classes provided in the subjects.
- (d) Elective courses included in the curriculum may be taught in a language other than English.
- (e) Each school district shall provide students enrolled in the program a meaningful opportunity to participate fully with other students in all extracurricular activities.
- (f) If money is appropriated for the purpose, the agency shall establish a limited number of pilot programs for the purpose of examining alternative methods of instruction in bilingual education and special language programs.

TEC, §29.056, Enrollment of Students in Program:

- (a) The agency shall establish standardized criteria for the identification, assessment, and classification of students of limited English proficiency eligible for entry into the program or exit from the program. The student's parent must approve a student's entry into the program, exit from the program, or placement in the program. The school district or parent may appeal the decision under Section 29.064. The criteria for identification, assessment, and classification may include:
 - (1) results of a home language survey conducted within four weeks of each student's enrollment to determine the language normally used in the home and the language normally used by the student, conducted in English and the home language, signed by the student's parents if the student is in kindergarten through grade 8 or by the student if the student is in grades 9 through 12, and kept in the student's permanent folder by the language proficiency assessment committee;
 - (2) the results of an agency-approved English language proficiency test administered to all students identified through the home survey as normally speaking a language other than English to determine the level of English language proficiency, with students in kindergarten or grade 1 being administered an oral English proficiency test and students in grades 2 through 12 being administered an oral and written English proficiency test; and
 - (3) the results of an agency-approved proficiency test in the primary language administered to all students identified under Subdivision (2) as being of limited English proficiency to determine the level of primary language proficiency, with students in kindergarten or grade 1 being administered an oral primary language proficiency test and students in grades 2 through 12 being administered an oral and written primary language proficiency test.
- (b) Tests under Subsection (a) shall be administered by professionals or paraprofessionals with the appropriate English and primary language skills and the training required by the test publisher.
- (c) The language proficiency assessment committee may classify a student as limited English proficiency if:
 - (1) the student's ability in English is so limited or the student's disabilities are so severe that assessment procedures cannot be administered;
 - (2) the student's score or relative degree of achievement on the agency-approved English proficiency test is below the levels established by the agency as indicative of reasonable proficiency;
 - (3) the student's primary language proficiency score as measured by an agency-approved test is greater than the student's proficiency in English; or
 - (4) the language proficiency assessment committee determines, based on other information, including a teacher evaluation, parental viewpoint, or student interview, that the student's primary language proficiency is greater than the student's proficiency in English or that the student is not reasonably proficient in English.
- (d) Not later than the 10th day after the date of the student's classification as a student of limited English proficiency, the language proficiency assessment committee shall give written notice of the classification to the student's parent. The notice must be in English and the parent's primary language. The parents of students eligible to participate in the required bilingual education program shall be informed of the benefits of the bilingual education or special language program and that it is an integral part of the school program.

- (e) The language proficiency assessment committee may retain, for documentation purposes, all records obtained under this section.
- (f) The district may not refuse to provide instruction in a language other than English to a student solely because the student has a disability.
- (g) A district may transfer a student of limited English proficiency out of a bilingual education or special language program for the first time or a subsequent time if the student is able to participate equally in a regular all-English instructional program as determined by:
 - (1) agency-approved tests administered at the end of each school year to determine the extent to which the student has developed oral and written language proficiency and specific language skills in English;
 - (2) satisfactory performance on the reading assessment instrument under Section 39.023(a) or an English language arts assessment instrument under Section 39.023(c), as applicable, with the assessment instrument administered in English, or, if the student is enrolled in the first or second grade, an achievement score at or above the 40th percentile in the reading and language arts sections of an English standardized test approved by the agency; and
 - (3) agency-approved criterion-referenced tests and the results of a subjective teacher evaluation.
- (h) If later evidence suggests that a student who has been transferred out of a bilingual education or special language program has inadequate English proficiency and achievement, the language proficiency assessment committee may reenroll the student in the program. Classification of students for reenrollment must be based on the criteria required by this section.

TEC, §29.0561, Evaluation of Transferred Students; Reenrollment:

- (a) The language proficiency assessment committee shall reevaluate a student who is transferred out of a bilingual education or special language program under Section 29.056(g) if the student earns a failing grade in a subject in the foundation curriculum under Section 28.002(a)(1) during any grading period in the first two school years after the student is transferred to determine whether the student should be reenrolled in a bilingual education or special language program.
- (b) During the first two school years after a student is transferred out of a bilingual education or special language program under Section 29.056(g), the language proficiency assessment committee shall review the student's performance and consider:
 - (1) the total amount of time the student was enrolled in a bilingual education or special language program;
 - (2) the student's grades each grading period in each subject in the foundation curriculum under Section 28.002(a)(1);
 - (3) the student's performance on each assessment instrument administered under Section 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 Subchapter A, Chapter 37.
- (c) After an evaluation under this section, the language proficiency assessment committee may require intensive instruction for the student or reenroll the student in a bilingual education or special language program.

TEC, §29.057, Facilities; Classes:

- (a) Bilingual education and special language programs must be located in the regular public schools of the district rather than in separate facilities.
- (b) Students enrolled in bilingual education or a special language program shall be placed in classes with other students of approximately the same age and level of educational attainment. The school district shall ensure that the instruction given each student is appropriate to the student's level of educational attainment, and the district shall keep adequate records of the educational level and progress of each student enrolled in the program.
- (c) The maximum student-teacher ratio shall be set by the agency and shall reflect the special educational needs of students enrolled in the programs.

TEC, §29.058, Enrollment of Students Who Do Not Have Limited English Proficiency:

With the approval of the school district and a student's parents, a student who does not have limited English proficiency may also participate in a bilingual education program. The number of participating students who do not have limited English proficiency may not exceed 40 percent of the number of students enrolled in the program.

TEC, §29.059, Cooperation Among Districts:

- (a) A school district may join with one or more other districts to provide the bilingual education and special language programs required by this subchapter. The availability of the programs shall be publicized throughout the districts involved.
- (b) A school district may allow a nonresident student of limited English proficiency to enroll in or attend its bilingual education or special language programs if the student's district of residence does not provide an appropriate program. The tuition for the student shall be paid by the district in which the student resides.

TEC, §29.060, Preschool, Summer School, and Extended Time Programs:

- (a) Each school district that is required to offer a bilingual education or special language program shall offer a voluntary program for children of limited English proficiency who will be eligible for admission to kindergarten or the first grade at the beginning of the next school year. A school that operates on a system permitted by this code other than a semester system shall offer 120 hours of instruction on a schedule the board of trustees of the district establishes. A school that operates on a semester system shall offer the program:
 - (1) during the period school is recessed for the summer; and
 - (2) for one-half day for eight weeks or on a similar schedule approved by the board of trustees.
- (b) Enrollment of a child in the program is optional with the parent of the child.
- (c) The program must be an intensive bilingual education or special language program that meets standards established by the agency. The student/teacher ratio for the program may not exceed 18/1.
- (d) A school district may establish on a full- or part-time basis other summer school, extended day, or extended week bilingual education or special language programs for students of limited English proficiency and may join with other districts in establishing the programs.
- (e) The programs required or authorized by this section may not be a substitute for programs required to be provided during the regular school year.

- (f) The legislature may appropriate money from the foundation school fund for support of a program under Subsection (a).

TEC, §29.061, Bilingual Education and Special Language Program Teachers:

- (a) The State Board for Educator Certification shall provide for the issuance of teaching certificates appropriate for bilingual education instruction to teachers who possess a speaking, reading, and writing ability in a language other than English in which bilingual education programs are offered and who meet the general requirements of Chapter 21. The board shall also provide for the issuance of teaching certificates appropriate for teaching English as a second language. The board may issue emergency endorsements in bilingual education and in teaching English as a second language.
- (b) A teacher assigned to a bilingual education program using one of the following program models must be appropriately certified for bilingual education by the board:
 - (1) transitional bilingual/early exit program model; or
 - (2) transitional bilingual/late exit program model.
- (b-1) A teacher assigned to a bilingual education program using a dual language immersion/one-way or two-way program model must be appropriately certified by the board for:
 - (1) bilingual education for the component of the program provided in a language other than English; and
 - (2) bilingual education or English as a second language for the component of the program provided in English.
- (b-2) A school district that provides a bilingual education program using a dual language immersion/one-way or two-way program model may assign a teacher certified under Subsection (b-1) (1) for the language other than English component of the program and a different teacher certified under Subsection (b-1) (2) for the English language component.
- (c) A teacher assigned to an English as a second language program must be appropriately certified for English as a second language by the board.
- (d) A school district may compensate a bilingual education or special language teacher for participating in a continuing education program that is in addition to the teacher's regular contract. The continuing education program must be designed to provide advanced bilingual education or special language program endorsement or skills.
- (e) The State Board for Educator Certification and the Texas Higher Education Coordinating Board shall develop a comprehensive plan for meeting the teacher supply needs created by the programs outlined in this subchapter.

TEC, §29.062, Compliance:

- (a) The legislature recognizes that compliance with this subchapter is an imperative public necessity. Therefore, in accordance with the policy of the state, the agency shall evaluate the effectiveness of programs under this subchapter based on the achievement indicators adopted under Section 39.053(c), including the results of assessment instruments. The agency may combine evaluations under this section with federal accountability measures concerning students of limited English proficiency.
- (b) The areas to be monitored shall include:
 - (1) program content and design;

- (2) program coverage;
 - (3) identification procedures;
 - (4) classification procedures;
 - (5) staffing;
 - (6) learning materials;
 - (7) testing materials;
 - (8) reclassification of students for either entry into regular classes conducted exclusively in English or reentry into a bilingual education or special education program; and
 - (9) activities of the language proficiency assessment committees.
- (c) Not later than the 30th day after the date of an on-site monitoring inspection, the agency shall report its findings to the school district or open-enrollment charter school and to the division of accreditation.
 - (d) The agency shall notify a school district or open-enrollment charter school found in noncompliance in writing, not later than the 30th day after the date of the on-site monitoring. The district or open-enrollment charter school shall take immediate corrective action.
 - (e) If a school district or open-enrollment charter school fails to satisfy appropriate standards adopted by the commissioner for purposes of Subsection (a), the agency shall apply sanctions, which may include the removal of accreditation, loss of foundation school funds, or both.

TEC, §29.063, Language Proficiency Assessment Committees:

- (a) Each school district that is required to offer bilingual education and special language programs shall establish a language proficiency assessment committee.
- (b) Each committee shall include a professional bilingual educator, a professional transitional language educator, a parent of a limited English proficiency student, and a campus administrator.
- (c) The language proficiency assessment committee shall:
 - (1) review all pertinent information on limited English proficiency students, including the home language survey, the language proficiency tests in English and the primary language, each student's achievement in content areas, and each student's emotional and social attainment;
 - (2) make recommendations concerning the most appropriate placement for the educational advancement of the limited English proficiency student after the elementary grades;
 - (3) review each limited English proficiency student's progress at the end of the school year in order to determine future appropriate placement;
 - (4) monitor the progress of students formerly classified as limited English proficiency who have transferred out of the bilingual education or special language program and, based on the information, designate the most appropriate placement for such students; and
 - (5) determine the appropriateness of a program that extends beyond the regular school year based on the needs of each limited English proficiency student.
- (d) The agency may prescribe additional duties for language proficiency assessment committees.

TEC, §29.064, Appeals:

A parent of a student enrolled in a school district offering bilingual education or special language programs may appeal to the commissioner if the district fails to comply with the requirements established by law or by the agency as authorized by this subchapter. If the parent disagrees with the placement of the student in the program, the parent may appeal that decision to the board of trustees. Appeals shall be conducted in accordance with procedures adopted by the commissioner.

TEC, §29.066, PEIMS Reporting Requirements:

- (a) A school district that is required to offer bilingual education or special language programs shall include the following information in the district's Public Education Information Management System (PEIMS) report:
 - (1) demographic information, as determined by the commissioner, on students enrolled in district bilingual education or special language programs;
 - (2) the number and percentage of students enrolled in each instructional model of a bilingual education or special language program offered by the district; and
 - (3) the number and percentage of students identified as students of limited English proficiency who do not receive specialized instruction.
- (b) For purposes of this section, the commissioner shall adopt rules to classify programs under this section as follows:
 - (1) if the program is a bilingual education program, the program must be classified under the Public Education Information Management System (PEIMS) report as:
 - (A) transitional bilingual/early exit: a bilingual program that serves students identified as students of limited English proficiency in both English and Spanish and transfers a student to English-only instruction not earlier than two or later than five years after the student enrolls in school;
 - (B) transitional bilingual/late exit: a bilingual program that serves students identified as students of limited English proficiency in both English and Spanish and transfers a student to English-only instruction not earlier than six or later than seven years after the student enrolls in school;
 - (C) dual language immersion/two-way: a biliteracy program that integrates students proficient in English and students identified as students of limited English proficiency in both English and Spanish and transfers a student identified as a student of limited English proficiency to English-only instruction not earlier than six or later than seven years after the student enrolls in school; or
 - (D) dual language immersion/one-way: a biliteracy program that serves only students identified as students of limited English proficiency in both English and Spanish and transfers a student to English-only instruction not earlier than six or later than seven years after the student enrolls in school; and
 - (2) if the program is a special language program, the program must be classified under the Public Education Information Management System (PEIMS) report as:
 - (A) English as a second language/content-based: an English program that serves students identified as students of limited English proficiency in English only by providing a full-time teacher certified under Section 29.061(c) to provide supplementary instruction for all content area instruction; or

- (B) English as a second language/pull-out: an English program that serves students identified as students of limited English proficiency in English only by providing a part-time teacher certified under Section 29.061(c) to provide English language arts instruction exclusively, while the student remains in a mainstream instructional arrangement in the remaining content areas.
- (c) If the school district has received a waiver and is not required to offer a bilingual education or special language program in a student's native language or if the student's parents have refused to approve the student's entry into a program as provided by Section 29.056, the program must be classified under the Public Education Information Management System (PEIMS) report as: no bilingual education or special language services provided.