

## **Chapter 89. Adaptations for Special Populations**

### **Subchapter BB. Commissioner's Rules Concerning State Plan for Educating English Learners**

#### **§89.1201. Policy.**

- (a) It is the policy of the state that every student in the state who has a primary language other than English and who is identified as an English learner shall be provided a full opportunity to participate in a bilingual education or English as a second language (ESL) program, as required in the Texas Education Code (TEC), Chapter 29, Subchapter B. To ensure equal educational opportunity, as required in the TEC, §1.002(a), each school district shall:
- (1) identify English learners based on criteria established by the state;
  - (2) provide bilingual education and ESL programs, as integral parts of the general program as described in the TEC, §4.002;
  - (3) seek appropriately certified teaching personnel to ensure that English learners are afforded full opportunity to master the essential knowledge and skills required by the state; and
  - (4) assess achievement for essential knowledge and skills in accordance with the TEC, Chapter 29, to ensure accountability for English learners and the schools that serve them.
- (b) The goal of bilingual education programs shall be to enable English learners to become competent in listening, speaking, reading, and writing in the English language through the development of literacy and academic skills in the primary language and English. Such programs shall emphasize the mastery of English language skills, as well as mathematics, science, and social studies, as integral parts of the academic goals for all students to enable English learners to participate equitably in school.
- (c) The goal of ESL programs shall be to enable English learners to become competent in listening, speaking, reading, and writing in the English language through the integrated use of second language acquisition methods. The ESL program shall emphasize the mastery of English language skills, as well as mathematics, science, and social studies, as integral parts of the academic goals for all students to enable English learners to participate equitably in school.
- (d) Bilingual education 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 English learners. The basic 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) Bilingual education allotment--An adjusted basic funding allotment provided for each school district based on student average daily attendance in a bilingual education or special language program in accordance with Texas Education Code (TEC), §42.153.
- (2) Certified English as a second language teacher--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.
- (3) Dual language immersion--A state-approved bilingual program model in accordance with TEC, §29.066.
- (4) Dual-language instruction--An educational approach that focuses on the use of English and the student's primary language for instructional purposes.

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- (5) English as a second language program--A special language program in accordance with TEC, Chapter 29.
- (6) English language proficiency standards (ELPS)--Standards to be published along with the Texas Essential Knowledge and Skills for each subject in the required curriculum outlined in Chapter 74 of this title (relating to Curriculum Requirements), including foundation and enrichment areas, ELPS, and college and career readiness standards.
- (7) English learner--A student who is in the process of acquiring English and has another language as the primary language. The terms English language learner and English learner are used interchangeably and are synonymous with limited English proficient (LEP) student, as used in TEC, Chapter 29, Subchapter B.
- (8) Exit--The point when a student is no longer classified as LEP (i.e., the student is reclassified), no longer requires bilingual or special language program services, and is classified as non-LEP in the Texas Student Data System Public Education Information Management System (TSDS PEIMS). The term "exit" as used in this subchapter is synonymous with the description in TEC, Chapter 29, of "transferring out" of bilingual or special language programming.
- (9) Reclassification--The process by which the language proficiency assessment committee determines that an English learner has met the appropriate criteria to be classified as non-LEP and is coded as such in TSDS PEIMS.
- (10) School district--For the purposes of this subchapter, the definition of a school district includes an open-enrollment charter school.

**§89.1205. Required Bilingual Education and English as a Second Language Programs.**

- (a) Each school district that has an enrollment of 20 or more English learners in any language classification in the same grade level district-wide shall offer a bilingual education program as described in subsection (b) of this section for the English learners in prekindergarten through the elementary grades who speak that language. "Elementary grades" shall include at least prekindergarten through Grade 5; sixth grade shall be included when clustered with elementary grades.
- (b) A school district shall provide a bilingual education program by offering dual-language instruction (English and primary language) in prekindergarten through the elementary grades, using one of the four bilingual program models described in §89.1210 of this title (relating to Program Content and Design).
- (c) All English learners for whom a school district is not required to offer a bilingual education program shall be provided an English as a second language (ESL) program as described in subsection (d) of this section, regardless of the students' grade levels and primary language, and regardless of the number of such students, except in cases where a district exercises the option described in subsection (g) of this section.
- (d) A school district shall provide ESL instruction by offering an ESL program using one of the two models described in §89.1210 of this title.
- (e) School districts may join with other school districts to provide bilingual education or ESL programs.
- (f) In addition to the required bilingual and/or ESL programs, school districts are authorized to establish a bilingual education program even if they have an enrollment of fewer than 20 English learners in any language classification in the same grade level district-wide and are not required to do so under subsection (a) of this section. Under this authorization, school districts shall adhere to all program requirements as described in §§89.1210, 89.1227, 89.1228, and 89.1229 of this title.
- (g) In addition to the required bilingual and/or ESL programs, school districts are authorized to establish a bilingual education program at grade levels in which the bilingual education program is not required under subsection (a) of this section. Under this authorization, school districts shall adhere to all program requirements as described in §§89.1210, 89.1227, 89.1228, and 89.1229 of this title.

**§89.1207. Bilingual Education Exceptions and English as a Second Language Waivers.**

- (a) Bilingual education program.

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- (1) Exceptions. A school district that is unable to provide a bilingual education program as required by §89.1205(a) of this title (relating to Required Bilingual Education and English as a Second Language Programs) because of an insufficient number of appropriately certified teachers shall request from the commissioner of education an exception to the bilingual education program and the approval of an alternative program. The approval of an exception to the bilingual education program shall be valid only during the school year for which it was granted. A request for a bilingual education program exception must be submitted by November 1 and shall include:
  - (A) a statement of the reasons the school district is unable to provide a sufficient number of appropriately certified teachers to offer the bilingual education program with supporting documentation;
  - (B) a description of the alternative instructional program and methods to meet the affective, linguistic, and cognitive needs of the English learners, including the manner through which the students will be given opportunity to master the essential knowledge and skills required by Chapter 74 of this title (relating to Curriculum Requirements) to include foundation and enrichment areas, English language proficiency standards (ELPS), and college and career readiness standards (CCRS);
  - (C) an assurance that appropriately certified teachers available in the school district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels to ensure that the linguistic and academic needs of the English learners with beginning levels of English proficiency are served on a priority basis;
  - (D) an assurance that the school district will implement a comprehensive professional development plan that:
    - (i) is ongoing and targets the development of the knowledge, skills, and competencies needed to serve the needs of English learners;
    - (ii) includes the teachers who are not certified or not appropriately certified who are assigned to implement the proposed alternative program; and
    - (iii) may include additional teachers who work with English learners;
  - (E) an assurance that at least 10% of the bilingual education allotment shall be used to fund the comprehensive professional development plan required under subparagraph (D) of this paragraph;
  - (F) an assurance that the school district will take actions to ensure that the program required under §89.1205(a) of this title will be provided the subsequent year, including its plans for recruiting an adequate number of appropriately certified teachers to eliminate the need for subsequent exceptions and measurable targets for the subsequent year; and
  - (G) an assurance that the school district shall satisfy the additional reporting requirements described in §89.1265(c) of this title (relating to Evaluation).
- (2) Documentation. A school district submitting a bilingual education exception shall maintain written records of all documents supporting the submission and assurances listed in paragraph (1) of this subsection, including:
  - (A) a description of the proposed alternative instructional program designed to meet the affective, linguistic, and cognitive needs of the English learners;
  - (B) the number of teachers for whom a bilingual education exception is needed by grade level and per campus;
  - (C) a copy of the school district's comprehensive professional development plan; and
  - (D) a copy of the bilingual allotment budget documenting that a minimum of 10% of the funds were used to fund the comprehensive professional development plan.
- (3) Approval of exceptions. Bilingual education program exceptions will be granted by the commissioner if the requesting school district:

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- (A) meets or exceeds the state average for English learner performance on the required state assessments;
  - (B) meets the requirements and measurable targets of the action plan described in paragraph (1)(F) of this subsection submitted the previous year and approved by the Texas Education Agency (TEA); or
  - (C) reduces by 25% the number of teachers under exception for bilingual programs when compared to the number of exceptions granted the previous year.
- (4) Denial of exceptions. A school district denied a bilingual education program exception must submit to the commissioner a detailed action plan for complying with required regulations for the following school year.
- (5) Appeals. A school district denied a bilingual education program exception may appeal to the commissioner or the commissioner's designee. The decision of the commissioner or commissioner's designee is final and may not be appealed further.
- (6) Special accreditation investigation. The commissioner may authorize a special accreditation investigation under the Texas Education Code (TEC), §39.057, if a school district  
is denied a bilingual education program exception for more than three consecutive years.
- (7) Sanctions. Based on the results of a special accreditation investigation, the commissioner may take appropriate action under the TEC, §39.102.
- (b) English as a second language (ESL) program.
- (1) Waivers. A school district that is unable to provide an ESL program as required by §89.1205(c) of this title because of an insufficient number of appropriately certified teachers shall request from the commissioner a waiver of the certification requirements for each teacher who will provide instruction in ESL for English learners. The approval of a waiver of certification requirements shall be valid only during the school year for which it was granted. A request for an ESL program waiver must be submitted by November 1 and shall include:
- (A) a statement of the reasons the school district is unable to provide a sufficient number of appropriately certified teachers to offer the ESL program;
  - (B) a description of the alternative instructional program, including the manner in which the teachers in the ESL program will meet the affective, linguistic, and cognitive needs of the English learners, including the manner through which the students will be given opportunity to master the essential knowledge and skills required by Chapter 74 of this title to include foundation and enrichment areas, ELPS, and CCRS;
  - (C) an assurance that appropriately certified teachers available in the school district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels in the elementary school campus and, if needed, secondary campuses, to ensure that the linguistic and academic needs of the English learners with the lower levels of English proficiency are served on a priority basis;
  - (D) an assurance that the school district shall implement a comprehensive professional development plan that:
    - (i) is ongoing and targets the development of the knowledge, skills, and competencies needed to serve the needs of English learners;
    - (ii) includes the teachers who are not certified or not appropriately certified who are assigned to implement the proposed alternative program; and
    - (iii) may include additional teachers who work with English learners;
  - (E) an assurance that at least 10% of the bilingual education allotment shall be used to fund the comprehensive professional development plan required under subparagraph (D) of this paragraph;

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- (F) an assurance that the school district will take actions to ensure that the program required under §89.1205(c) of this title will be provided the subsequent year, including its plans for recruiting an adequate number of appropriately certified teachers to eliminate the need for subsequent waivers; and
  - (G) an assurance that the school district shall satisfy the additional reporting requirements described in §89.1265(c) of this title.
- (2) Documentation. A school district submitting an ESL waiver shall maintain written records of all documents supporting the submission and assurances listed in paragraph (1) of this subsection, including:
- (A) a description of the proposed alternative instructional program designed to meet the affective, linguistic, and cognitive needs of the English learners;
  - (B) the name and teaching assignment, per campus, of each teacher who is assigned to implement the ESL program and is under a waiver and the estimated date for the completion of the ESL supplemental certification, which must be completed by the end of the school year for which the waiver was requested;
  - (C) a copy of the school district's comprehensive professional development plan;
  - (D) a copy of the bilingual allotment budget documenting that a minimum of 10% of the funds were used to fund the comprehensive professional development plan; and
  - (E) a description of the actions taken to recruit an adequate number of appropriately certified teachers.
- (3) Approval of waivers. ESL waivers will be granted by the commissioner if the requesting school district:
- (A) meets or exceeds the state average for English learner performance on the required state assessments; or
  - (B) meets the requirements and measurable targets of the action plan described in paragraph (1)(G) of this subsection submitted the previous year and approved by the TEA.
- (4) Denial of waivers. A school district denied an ESL program waiver must submit to the commissioner a detailed action plan for complying with required regulations for the following school year.
- (5) Appeals. A school district denied an ESL waiver may appeal to the commissioner or the commissioner's designee. The decision of the commissioner or commissioner's designee is final and may not be appealed further.
- (6) Special accreditation investigation. The commissioner may authorize a special accreditation investigation under the TEC, §39.057, if a school district is denied an ESL waiver for more than three consecutive years.
- (7) Sanctions. Based on the results of a special accreditation investigation, the commissioner may take appropriate action under the TEC, §39.102.

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

- (a) Each school district required to offer a bilingual education or English as a second language (ESL) program shall provide each English learner the opportunity to be enrolled in the required program at his or her grade level. Each student's level of proficiency shall be designated by the language proficiency assessment committee in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee). The school district shall accommodate the instruction, pacing, and materials to ensure that English learners have a full opportunity to master the essential knowledge and skills of the required curriculum, which includes the Texas Essential Knowledge and Skills and English language proficiency standards (ELPS). Students participating in the bilingual education program may demonstrate their mastery of the essential knowledge and skills in either their primary language or in English for each content area.

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- (1) A bilingual education program of instruction established by a school district shall be a full-time program of dual-language instruction (English and primary language) 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 under Texas Education Code (TEC), §29.055(a).
  - (2) An ESL program of instruction established by a school district shall be a program of intensive instruction in English in which ESL teachers recognize and address language differences in accordance with TEC, §29.055(a).
- (b) The bilingual education program and ESL program 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 education programs, school districts shall purchase instructional materials in both program languages with the district's instructional materials allotment or otherwise acquire instructional materials for use in bilingual education classes in accordance with TEC, §31.029(a). Instructional materials for bilingual education 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 provide for ongoing coordination between the bilingual/ESL program and the general educational program. The bilingual education and ESL programs shall address the affective, linguistic, and cognitive needs of English learners as follows.
- (1) Affective.
    - (A) English learners in a bilingual program shall be provided instruction using second language acquisition methods in their primary language to introduce basic concepts of the school environment, and content instruction both in their primary language and in English, which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall be designed to consider the students' learning experiences and shall incorporate the cultural aspects of the students' backgrounds in accordance with TEC, §29.055(b).
    - (B) English learners in an ESL program shall be provided instruction using second language acquisition methods in English to introduce basic concepts of the school environment, which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall be designed to incorporate the students' primary languages and learning experiences and shall incorporate the cultural aspects of the students' backgrounds in accordance with TEC, §29.055(b).
  - (2) Linguistic.
    - (A) English learners in a bilingual program shall be provided intensive instruction in the skills of listening, speaking, reading, and writing both in their primary language and in English, provided through the ELPS. The 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) English learners in an ESL program shall be provided intensive instruction to develop proficiency in listening, speaking, reading, and writing in the English language, provided through the ELPS. 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.
  - (3) Cognitive.
    - (A) English learners in a bilingual program shall be provided instruction in language arts, mathematics, science, and social studies both in their primary language and in English, using second language acquisition methods in either their primary language, in English, or in both, depending on the specific program model(s) implemented by the district. The content area instruction in both languages shall be structured to ensure that the students

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master the required essential knowledge and skills and higher-order thinking skills in all subjects.

- (B) English learners in an ESL program shall be provided instruction in English in language arts, mathematics, science, and social studies using second language acquisition methods. 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.

(c) The bilingual education program shall be implemented through at least one of the following program models.

- (1) Transitional bilingual/early exit is a bilingual program model in which students identified as English learners are served in both English and another language and are prepared to meet reclassification criteria to be successful in English-only instruction 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 primary 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' primary language along with instruction in English that targets second language development through academic content.
- (2) Transitional bilingual/late exit is a bilingual program model in which students identified as English learners are served in both English and another language and are prepared to meet reclassification criteria to be successful in English-only instruction 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 primary 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' primary language along with instruction in English that targets second language development through academic content.
- (3) Dual language immersion/one-way is a bilingual/biliteracy program model in which students identified as English learners are served in both English and another language and are prepared to meet reclassification criteria in order to be successful in English-only instruction not earlier than six or later than seven years after the student enrolls in school. Instruction provided in a language other than English in this program model is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061. Instruction provided in English in this program model 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 full proficiency in another language as well as English. This model provides ongoing instruction in literacy and academic content in the students' primary language as well as English, with at least half of the instruction delivered in the students' primary language for the duration of the program.
- (4) Dual language immersion/two-way is a bilingual/biliteracy program model in which students identified as English learners are integrated with students proficient in English and are served in both English and another language and are prepared to meet reclassification criteria in order to be successful in English-only instruction not earlier than six or later than seven years after the student enrolls in school. Instruction provided in a language other than English in this program model is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061, for the assigned grade level and content area. Instruction provided in English in this program model 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, for the assigned grade level and content area. The goal of two-way dual language immersion is for program participants to attain full proficiency in another language as well as English. This model provides ongoing instruction in literacy and academic content in English and another language with at least half of the instruction delivered in the non-English program language for the duration of the program.

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- (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 students identified as English learners through English instruction by a teacher appropriately certified in ESL under TEC, §29.061(c), through English language arts and reading, mathematics, science, and social studies. The goal of content-based ESL is for English learners to attain full proficiency in English in order to participate equitably in school. This model targets English language development through academic content instruction that is linguistically and culturally responsive in English language arts and reading, mathematics, science, and social studies.
  - (2) An ESL/pull-out program model is an English acquisition program that serves students identified as English learners through English instruction provided by an appropriately certified ESL teacher under the TEC, §29.061(c), through English language arts and reading. The goal of ESL pull-out is for English learners to attain full proficiency in English in order to participate equitably in school. This model targets English language development through academic content instruction that is linguistically and culturally responsive in English language arts and reading. Instruction shall be provided by the ESL teacher in a pull-out or inclusionary delivery model.
- (e) Except in the courses specified in subsection (f) of this section, second language acquisition methods, which may involve the use of the students' primary language, may be provided in any of the courses or electives required for promotion or graduation to assist the English learners to master the essential knowledge and skills for the required subject(s). The use of second language acquisition methods shall not impede the awarding of credit toward meeting promotion or graduation requirements.
- (f) In subjects such as art, music, and physical education, English learners shall participate with their English-speaking 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 students enrolled in bilingual education and ESL programs have a meaningful opportunity to participate with other students in all extracurricular activities.
- (g) The required bilingual education or ESL program shall be provided to every English learner with parental approval until such time that the student meets exit criteria as described in §89.1225(i) of this title (relating to Testing and Classification of Students) or §89.1226(i) of this title (relating to Testing and Classification of Students, Beginning with School Year 2019-2020) or graduates from high school.

**§89.1215. Home Language Survey.**

- (a) School districts shall administer only one home language survey to each new student enrolling for the first time in a Texas public school in any grade from prekindergarten through Grade 12. School districts shall require that the survey be signed by the student's parent or guardian for each student in prekindergarten through Grade 8 or by the student in Grades 9-12 as permitted under the Texas Education Code, §29.056(a)(1). The original copy of the survey shall be kept in the student's permanent record.
- (b) The home language survey shall be administered in English, Spanish, and Vietnamese; for students of other language groups, the home language survey shall be translated into the primary language whenever possible. The home language survey shall contain the following questions.
  - (1) "What language is spoken in the child's home most of the time?"
  - (2) "What language does the child speak most of the time?"
- (c) If the response on the home language survey indicates that a language other than English is used, the student shall be tested in accordance with §89.1225 of this title (relating to Testing and Classification of Students) or §89.1226 of this title (relating to Testing and Classification of Students, Beginning with School Year 2019-2020).
- (d) For students previously enrolled in a Texas public school, the receiving district shall secure the student records, including the home language survey. All attempts to contact the sending district to request records shall be documented. Multiple attempts to obtain the student's home language survey shall be made. If attempts to obtain the student's home language survey from the sending district are unsuccessful, the

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identification process shall begin while attempts to contact the sending district for records continue throughout the four-week testing and identification period.

**§89.1220. Language Proficiency Assessment Committee.**

- (a) School districts shall by local board policy establish and operate a language proficiency assessment committee. The school district shall have on file policy and procedures for the selection, appointment, and training of members of the language proficiency assessment committee(s).
- (b) The language proficiency assessment committee shall include an appropriately certified bilingual educator (for students served through a bilingual education program), an appropriately certified English as a second language (ESL) educator (for students served through an ESL program), a parent of an English learner 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 language proficiency assessment committee, the school district may add other trained members to the committee.
- (d) No parent serving on the language proficiency assessment committee shall be an employee of the school district.
- (e) A school district shall establish and operate a sufficient number of language proficiency assessment committees to enable them to discharge their duties within four weeks of the enrollment of English learners.
- (f) All members of the language proficiency assessment committee, 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 and training of all members, including the parents, of the language proficiency assessment committee.
- (g) Upon their initial enrollment and at the end of each school year, the language proficiency assessment committee shall review all pertinent information on all English learners identified in accordance with §89.1225(f) of this title (relating to Testing and Classification of Students) or §89.1226 of this title (relating to Testing and Classification of Students, Beginning with School Year 2019-2020) and shall:
  - (1) designate the language proficiency level of each English learner in accordance with the guidelines issued pursuant to §89.1225(b)-(f) or §89.1226(b)-(f) of this title;
  - (2) designate the level of academic achievement of each English learner;
  - (3) designate, subject to parental approval, the initial instructional placement of each English learner in the required program;
  - (4) facilitate the participation of English learners in other special programs for which they are eligible while ensuring full access to the language program services required under the TEC, §29.053; and
  - (5) reclassify students, at the end of the school year only, as English proficient in accordance with the criteria described in §89.1225(i) or §89.1226(i) of this title.
- (h) The language proficiency assessment committee shall give written notice to the student's parent or guardian, advising that the student has been classified as an English learner and requesting approval to place the student in the required bilingual education or ESL program not later than the 10th calendar day after the date of the student's classification in accordance with TEC, §29.056. The notice shall include information about the benefits of the bilingual education or ESL program for which the student has been recommended and that it is an integral part of the school program.
- (i) Before the administration of the state criterion-referenced test each year, the language proficiency assessment committee shall determine the appropriate assessment option for each English learner 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 parent approval of an English learner's entry into the bilingual education or ESL program recommended by the language proficiency assessment committee, the school district shall place the student

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in the recommended program. Only English learners with parent approval who are receiving services will be included in the bilingual education allotment.

- (k) The language proficiency assessment committee shall monitor the academic progress of each student who has met criteria for exit 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 language proficiency assessment committee shall determine, based on the student's second language acquisition needs, whether the student may require intensive instruction or should be reenrolled in a bilingual education or special language program. In accordance with TEC, §29.0561, 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 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 English learner.
  - (1) Documentation shall include:
    - (A) the identification of the student as an English learner;
    - (B) the designation of the student's level of language proficiency;
    - (C) the recommendation of program placement;
    - (D) parental approval of entry or placement into the program;
    - (E) the dates of entry into, and placement within, the program;
    - (F) assessment information as outlined in Chapter 101, Subchapter AA, of this title;
    - (G) additional instructional interventions provided to address the specific language needs of the student;
    - (H) the date of exit from the program and parental approval;
    - (I) the results of monitoring for academic success, including students formerly classified as English learners, as required under the TEC, §29.063(c)(4); and
    - (J) the home language survey.
  - (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 identify, exit, or place a student in a program without written approval of the student's parent or guardian if:
  - (1) the student is 18 years of age or has had the disabilities of minority removed;
  - (2) the parent or legal guardian 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.

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**§89.1225. Testing and Classification of Students.**

- (a) Beginning with school year 2019-2020, the provisions of this section shall expire and be superseded by the provisions in §89.1226 of this title (relating to Testing and Classification of Students, Beginning with School Year 2019-2020).
- (b) Within four 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 required oral language proficiency test in prekindergarten through Grade 12 and norm-referenced standardized achievement instrument in Grades 2-12 as described in subsection (c) of this section and shall be identified as an English learner and placed in the required bilingual education or English as a second language (ESL) program in accordance with the criteria listed in subsection (f) of this section.
- (c) For identifying English learners, 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, an oral language proficiency test approved by the Texas Education Agency (TEA); and
  - (2) in Grades 2-12, a TEA-approved oral language proficiency test and the English reading and English language arts sections from a TEA-approved norm-referenced assessment.
- (d) School districts that provide a bilingual education program at the elementary grades shall administer an oral language proficiency test in the primary language of the student who is eligible to be served in the bilingual education program. If the primary language of the student is Spanish, the school district shall administer a Spanish TEA-approved oral language proficiency test. If a TEA-approved language proficiency test is not available in the primary language of the student, the school district shall determine the student's level of proficiency using informal oral language assessment measures.
- (e) All of the 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 entry into a bilingual education or ESL program, a student shall be identified as an English learner using the following criteria:
  - (1) In prekindergarten through Grade 1, the student's score on the English oral language proficiency test is below the level designated for indicating English proficiency.
  - (2) In Grades 2-12:
    - (A) the student's score on the English oral language proficiency test is below the level designated for indicating English proficiency; and
    - (B) the student's score on the English reading and/or English language arts sections of the TEA-approved norm-referenced standardized achievement instrument at his or her grade level is below the 40th percentile.
- (g) A student shall be identified as an English learner if the student's ability in English is so limited that the English oral language proficiency or norm-referenced assessments described in subsection (c) of this section cannot be administered.
- (h) The language proficiency assessment committee in conjunction with the admission, review, and dismissal (ARD) committee shall identify a student as an English learner if the student's ability in English is so limited or the student's disabilities are so severe that the English oral language proficiency or norm-referenced assessments described in subsection (c) of this section cannot be administered. The decision for entry into a bilingual education or ESL program shall be determined by the language proficiency assessment committee in conjunction with the ARD committee in accordance with §89.1220(f) of this title (relating to Language Proficiency Assessment Committee).
- (i) For exit from a bilingual education or ESL program, a student may be classified as English proficient only at the end of the school year in which a student would be able to participate equally in a general education, all-English instructional program. This determination shall be based upon all of the following:

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- (1) English proficiency on the state's approved test that measures the extent to which the student has developed oral and written language proficiency and specific language skills in English;
  - (2) passing standard met on the reading assessment instrument under the Texas Education Code (TEC), §39.023(a), or, for students at grade levels not assessed by the aforementioned reading assessment instrument, a score at or above the 40th percentile on both the English reading and the English language arts sections of the state's approved norm-referenced standardized achievement instrument; and
  - (3) English proficiency on a TEA-approved criterion-referenced written test and the results of a subjective teacher evaluation using the state's standardized rubric.
- (j) A student may not be exited from the bilingual education or ESL program in prekindergarten or kindergarten. A school district must ensure that English learners are prepared to meet academic standards required by the TEC, §28.0211.
  - (k) A student may not be exited from the bilingual education or ESL program if the language proficiency assessment committee has recommended designated supports or accommodations on the state reading or writing assessment instrument.
  - (l) For English learners who are also eligible for special education services, the standardized process for English learner program exit is followed in accordance with applicable provisions of subsection (i) of this section. However, annual meetings to review student progress and make recommendations for program exit must be made in all instances by the language proficiency assessment committee in conjunction with the ARD committee in accordance with §89.1230(b) of this title (relating to Eligible Students with Disabilities). Additionally, the language proficiency committee in conjunction with the ARD committee shall implement assessment procedures that differentiate between language proficiency and disabling conditions in accordance with §89.1230(a) of this title.
  - (m) For an English learner with significant cognitive disabilities, the language proficiency assessment committee in conjunction with the ARD committee may determine that the state's English language proficiency assessment for exit is not appropriate because of the nature of the student's disabling condition. In these cases, the language proficiency assessment committee in conjunction with the ARD committee may recommend that the student take the state's alternate English language proficiency assessment and shall determine an appropriate performance standard requirement for exit by language domain under subsection (i)(1) of this section;
  - (n) Notwithstanding §101.101 of this title (relating to Group-Administered Tests), all tests used for the purpose of identification, exit, and placement of students and approved by the TEA must be re-normed at least every eight years.
  - (o) The grade levels and the scores on each test that shall identify a student as an English learner or exit a student from a bilingual or ESL program shall be established by the TEA. The commissioner of education may review the approved list of tests, grade levels, and scores annually and update the list.

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

- (a) A dual language immersion program model shall address all curriculum requirements specified in Chapter 74, Subchapter A, of this title (relating to Required Curriculum) to include foundation and enrichment areas, English language proficiency standards, and college and career readiness standards.
- (b) A dual language immersion program model shall be a full-time program of academic instruction in English and another language.
- (c) A dual language immersion program model shall provide equitable resources in English and the additional program language whenever possible.
- (d) A minimum of 50% of instructional time shall be provided in the language other than English for the duration of the program.
- (e) Implementation shall:
  - (1) begin at prekindergarten or kindergarten, as applicable;

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- (2) continue without interruption incrementally through the elementary grades; and
  - (3) consider expansion to middle school and high school whenever possible.
- (f) A dual language immersion program model shall be developmentally appropriate and based on current best practices identified in research.

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

- (a) Student enrollment in a two-way dual language immersion program model is optional for English proficient students in accordance with §89.1233(a) of this title (relating to Participation of English Proficient Students).
- (b) A two-way dual language immersion 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.
- (c) A school district implementing a two-way dual language immersion program model shall develop a policy on enrollment and continuation for students in this program model. The policy shall address:
  - (1) eligibility criteria;
  - (2) program purpose;
  - (3) the district's commitment to providing equitable access to services for English learners;
  - (4) grade levels in which the program will be implemented;
  - (5) support of program goals as stated in §89.1210 of this title (relating to Program Content and Design); and
  - (6) expectations for students and parents.
- (d) A school district implementing a two-way program model shall obtain written parental approval as follows.
  - (1) For English learners, written parental approval is obtained in accordance with §89.1240 of this title (relating to Parental Authority and Responsibility).
  - (2) For English proficient students, written parental approval is obtained through a school district-developed process.

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

- (a) School recognition. A school district may recognize one or more of its schools that implement an exceptional dual language immersion program model if the school meets all of the following criteria.
  - (1) The school must meet the minimum requirements stated in §89.1227 of this title (relating to Minimum Requirements for Dual Language Immersion Program Model).
  - (2) The school must receive an acceptable performance rating in the state accountability system.
  - (3) The school must not be identified for any stage of intervention for the district's bilingual and/or English as a second language program under the performance-based monitoring system.
- (b) Student recognition. A student participating in a dual language immersion program model or any other state-approved bilingual or ESL program model may be recognized by the program and its local school district board of trustees by earning a performance acknowledgement in accordance with §74.14 of this title (relating to Performance Acknowledgments).

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

- (a) School districts shall implement assessment procedures that differentiate between language proficiency and disabling conditions in accordance with Subchapter AA of this chapter (relating to Commissioner's Rules Concerning Special Education Services) and shall establish placement procedures that ensure that placement in a bilingual education or English as a second language program is not refused solely because the student has a disability.

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- (b) Language proficiency assessment committee members shall meet in conjunction with admission, review, and dismissal committee members to review and provide recommendations with regard to the educational needs of each English learner who qualifies for services in the special education program.

**§89.1233. Participation of English Proficient Students.**

- (a) School districts shall fulfill their obligation to provide required bilingual program services to English learners in accordance with Texas Education Code (TEC), §29.053.
- (b) School districts may enroll students who are not English learners in the bilingual education program or the English as a second language program in accordance with TEC, §29.058.
- (c) The number of participating students who are not English learners shall not exceed 40% of the number of students enrolled in the program district-wide in accordance with TEC, §29.058.

**§89.1235. Facilities.**

Bilingual education 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. In order to provide the required bilingual education or ESL programs, school districts may concentrate the programs at a limited number of facilities within the school district. Recent immigrant English learners shall not remain enrolled in newcomer centers for longer than two years.

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

- (a) The parent or legal guardian shall be notified in English and the parent or legal guardian's primary language that their child has been classified as an English learner and recommended for placement in the required bilingual education or English as a second language (ESL) program. They shall be provided information describing the bilingual education or ESL program recommended, its benefits to the student, and its being an integral part of the school program to ensure that the parent or legal guardian understands the purposes and content of the program. The entry or placement of a student in the bilingual education or ESL program must be approved in writing by the student's parent or legal guardian in order to have the student included in the bilingual education allotment. The parent's or legal guardian's approval shall be considered valid for the student's continued participation in the required bilingual education or ESL program until the student meets the reclassification criteria described in §89.1225(i) of this title (relating to Testing and Classification of Students) or §89.1226(i) of this title (relating to Testing and Classification of Students, Beginning with School Year 2019-2020), the student graduates from high school, or a change occurs in program placement.
- (b) The school district shall give written notification to the student's parent or legal guardian of the student's reclassification as English proficient and his or her exit from the bilingual education or ESL program and acquire written approval as required under the Texas Education Code, §29.056(a). Students meeting exit requirements may continue in the bilingual education or ESL program with parental approval but are not eligible for inclusion in the bilingual education allotment.
- (c) The parent or legal guardian of a student enrolled in a school district that is required to offer bilingual education or ESL programs may appeal to the commissioner of education if the school district fails to comply with the law or the rules. Appeals shall be filed in accordance with Chapter 157 of this title (relating to Hearings and Appeals).

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

- (a) School districts shall take all reasonable affirmative steps to assign appropriately certified teachers to the required bilingual education and English as a second language (ESL) programs in accordance with the Texas Education Code (TEC), §29.061, concerning bilingual education and special language program teachers. School districts that are unable to secure a sufficient number of appropriately certified bilingual education and/or ESL teachers to provide the required programs shall request activation of the appropriate permits in accordance with Chapter 230 of this title (relating to Professional Educator Preparation and Certification).

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- (b) School districts that are unable to employ a sufficient number of teachers, including part-time teachers, who meet the requirements of subsection (a) of this section for the bilingual education and ESL programs shall apply on or before November 1 for an exception to the bilingual education program as provided in §89.1207(a) of this title (relating to Bilingual Education Exceptions and English as a Second Language Waivers) or a waiver of the certification requirements in the ESL program as provided in §89.1207(b) of this title as needed.
- (c) Teachers assigned to the bilingual education program and/or ESL program may receive salary supplements as authorized by the TEC, §42.153.
- (d) School districts may compensate teachers and aides assigned to bilingual education and ESL programs for participation in professional development designed to increase their skills or lead to bilingual education or ESL certification.
- (e) The commissioner of education shall encourage school districts to cooperate with colleges and universities to provide training for teachers assigned to the bilingual education and/or ESL programs.
- (f) The Texas Education Agency shall develop, in collaboration with education service centers, resources for implementing bilingual education and ESL training programs. The materials shall provide a framework for:
  - (1) developmentally appropriate bilingual education programs for early childhood through the elementary grades;
  - (2) affectively, linguistically, and cognitively appropriate instruction in bilingual education and ESL programs in accordance with §89.1210(b)(1)-(3) of this title (relating to Program Content and Design); and
  - (3) developmentally appropriate programs for English learners identified as gifted and talented and English learners with disabilities.

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

Summer school programs that are provided under the Texas Education Code (TEC), §29.060, for English learners who will be eligible for admission to kindergarten or Grade 1 at the beginning of the next school year shall be implemented in accordance with this section.

- (1) Purpose of summer school programs.
  - (A) English learners shall have an opportunity to receive special instruction designed to prepare them to be successful in kindergarten and Grade 1.
  - (B) Instruction shall focus on language development and essential knowledge and skills appropriate to the level of the student.
  - (C) The program shall address the affective, linguistic, and cognitive needs of the English learners in accordance with §89.1210(b) of this title (relating to Program Content and Design).
- (2) Establishment of, and eligibility for, the program.
  - (A) Each school district required to offer a bilingual or English as a second language (ESL) program in accordance with the TEC, §29.053, shall offer the summer program.
  - (B) To be eligible for enrollment:
    - (i) a student must be eligible for admission to kindergarten or to Grade 1 at the beginning of the next school year and must be an English learner; and
    - (ii) a parent or guardian must have approved placement of the English learner in the required bilingual or ESL program following the procedures described in §89.1220(g) of this title (relating to Language Proficiency Assessment Committee) and §89.1225(b)-(f) of this title (relating to Testing and Classification of Students) or §89.1226(b)-(f) of this title (relating to Testing and Classification of Students, Beginning with School Year 2019-2020).

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- (3) Operation of the program.
  - (A) Enrollment is optional.
  - (B) The program shall be operated on a one-half day basis, a minimum of three hours each day, for eight weeks or the equivalent of 120 hours of instruction.
  - (C) The student/teacher ratio for the program district-wide shall not exceed 18 to one.
  - (D) A school district is not required to provide transportation for the summer program.
  - (E) Teachers shall possess certification as required in the TEC, §29.061, and §89.1245 of this title (relating to Staffing and Staff Development).
  - (F) Reporting of student progress shall be determined by the board of trustees. A summary of student progress shall be provided to parents at the conclusion of the program. This summary shall be provided to the student's teacher at the beginning of the next regular school term.
  - (G) A school district may join with other school districts in cooperative efforts to plan and implement programs.
  - (H) The summer school program shall not substitute for any other program required to be provided during the regular school term, including those required in the TEC, §29.153.
- (4) Funding and records for programs.
  - (A) A school district shall use state and local funds for program purposes.
    - (i) Available funds appropriated by the legislature for the support of summer school programs provided under the TEC, §29.060, shall be allocated to school districts in accordance with this subsection.
    - (ii) Funding for the summer school program shall be on a unit basis in such an allocation system to ensure a pupil/teacher ratio of not more than 18 to one. The numbers of students required to earn units shall be established by the commissioner. The allotment per unit shall be determined by the commissioner based on funds available.
    - (iii) Any school district required to offer the program under paragraph (2)(A) of this subsection that has fewer than 10 students district-wide desiring to participate is not required to operate the program. However, those school districts must document that they have encouraged students' participation in multiple ways.
    - (iv) Payment to school districts for summer school programs shall be based on units employed. This information must be submitted in a manner and according to a schedule established by the commissioner in order for a school district to be eligible for funding.
  - (B) A school district shall maintain records of eligibility, attendance, and progress of students.

**§89.1265. Evaluation.**

- (a) All school districts required to conduct a bilingual education or English as a second language (ESL) program shall conduct an annual evaluation in accordance with Texas Education Code (TEC), §29.053, collecting a full range of data to determine program effectiveness to ensure student academic success. The annual evaluation report shall be presented to the board of trustees before November 1 of each year and the report shall be retained at the school district level in accordance with TEC, §29.062.
- (b) Annual school district reports of educational performance shall reflect:
  - (1) the academic progress in the language(s) of instruction for English learners;
  - (2) the extent to which English learners are becoming proficient in English;

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- (3) the number of students who have been exited from the bilingual education and ESL programs; and
  - (4) the number of teachers and aides trained and the frequency, scope, and results of the professional development in approaches and strategies that support second language acquisition.
- (c) In addition, for those school districts that filed in the previous year and/or will be filing a bilingual education exception and/or ESL waiver in the current year, the annual district report of educational performance shall also reflect:
- (1) the number of teachers for whom an exception or waiver was/is being filed;
  - (2) the number of teachers for whom an exception or waiver was filed in the previous year who successfully obtained certification; and
  - (3) the frequency and scope of a comprehensive professional development plan, implemented as required under §89.1207 of this title (relating to Bilingual Education Exceptions and English as a Second Language Waivers), and results of such plan if an exception and/or waiver was filed in the previous school year.
- (d) School districts shall report to parents the progress of their child in acquiring English as a result of participation in the program offered to English learners.
- (e) Each school year, the principal of each school campus, with the assistance of the campus level committee, shall develop, review, and revise the campus improvement plan described in the TEC, §11.253, for the purpose of improving student performance for English learners.