



## **Bilingual Education Exception and English as a Second Language (ESL) Waiver**

### **Frequently Asked Questions (FAQ)**

#### **1. How do we know if a Bilingual Education Exception needs to be filed? How do we know if an ESL Waiver needs to be filed?**

TAC Chapter 89.1207 provides bilingual education exception and ESL waiver requirements for all Local Education Agencies (LEAs), which includes all school districts, Districts of Innovation, and open-enrollment charter schools.

The following resources walk districts through the process of identifying whether their district needs to file a Bilingual Education Exception or ESL Waiver. These resources have been updated to reflect revisions to PEIMS coding beginning in the 2019-2020 school year and can be found under “Resources” at the bottom of the [TEA Bilingual Education Exception and ESL Waiver Application webpage](#).

- [Bilingual Education Exception Scenario Chain](#)
- [English as a Second Language \(ESL\) Waiver Scenario Chain](#)

#### **2. If a teacher is an elementary self-contained classroom and serving ELs under a Bilingual Exception and is also not ESL certified, what PEIMS Parental Permission code should the campus use for these students? Should this teacher be under both a Bilingual Exception and an ESL Waiver?**

If a teacher is under a bilingual exception, he or she would not also be under an ESL waiver. The fact that the teacher is not ESL certified would be mentioned on the Bilingual Exception Application as part of the information on the district’s alternative language program plan. The students’ parent permission codes would be (E) since the district has filed a bilingual education exception, and the program codes would be Alternative Language Program (01) since the children are in an alternative plan from a bilingual education exception. The program codes for bilingual and ESL would be (0).

#### **3. We have an appropriately bilingual or ESL certified teacher, but the teacher’s certification is under a probationary or emergency permit status. Does that mean that the teacher needs to be added to the bilingual exception or ESL waiver?**

If a teacher has the appropriate bilingual or ESL certificate in a probationary or emergency permit status, the teacher is therefore appropriately certified for the specified time period and would not need to be added to the bilingual education exception or ESL waiver.

The [emergency permit](#) process is initiated by the district on behalf of the teacher with advanced preparation to ensure that the teacher obtains the permit for the school year in which the teacher will be instructing. A teacher must meet [specific requirements](#) in order to obtain the permit.

**4. Our teacher that needs to be bilingual or ESL certified to meet state compliance for our bilingual or ESL program has taken and passed the appropriate certification exam. Can we leave this teacher off the bilingual exception or ESL waiver?**

No. Passing a certification exam does not suffice. The appropriate bilingual or ESL certification must be posted to the teacher's certificate before the November 1<sup>st</sup> deadline for filing a bilingual exception or ESL waiver. If a teacher is in the process of obtaining the appropriate certification, such as participating in an alternative certification program, and the appropriate certification has not yet been obtained and posted to the teacher's certificate, the teacher would count toward the bilingual exception or ESL waiver.

**5. In previous years, the ESL Waiver application asked for teacher's names who were under the waiver. The current application does not. Do we need to submit the names of these teachers to TEA?**

No. Revisions to TAC Chapter 89, Subchapter BB that were adopted on July 15, 2018 now require districts that submit an ESL Waiver to maintain documentation at the district level that includes the names and teaching assignments, per campus, of each teacher who is assigned to implement the ESL program and is under the ESL waiver, along with the estimated date for completion of the ESL supplemental certification. The expectation is that the ESL certification of those under the waiver is to be completed by the end of the school year for which the waiver was requested. [TAC 89.1207 (b)(2)(B)].

**6. If our district is submitting for both a bilingual education exception and an ESL waiver application, can we consolidate the comprehensive professional development (PD) plan into one combined document, or do we have to have a separate plan for each?**

LEAs who have submitted a bilingual exception and an ESL waiver can consolidate the comprehensive PD plan into one document as long as the LEA differentiates clearly the plan for teachers under the exception and the plan for teachers under the waiver.

**7. What is the Comprehensive Professional Development (PD) Plan, and how is it funded?**

TAC Chapter 89.1207 (a)(1)(D) and (b)(1)(D) explain the assurance for districts who file a bilingual education exception and/or ESL waiver to implement a comprehensive PD plan. This plan is not included in the bilingual exception or ESL waiver application but shall be maintained at the district level.

TAC Chapter 89.1207 (a)(1)(E) and (b)(1)(E) explain the assurance for districts who file a bilingual education exception and/or ESL waiver to utilize at least 10% of the bilingual education allotment (BEA) to fund their comprehensive PD plan. In cases where an LEA has applied for both a bilingual education exception and an ESL waiver for the 2019-2020 school year, the LEA must assure that a total of at least 10% of their total BEA funds are utilized for PD provided through the comprehensive PD plans.

Although the target audience of the comprehensive PD plan is the teacher(s) under the bilingual exception and/or ESL waiver, additional teachers can participate in the professional development activities as available.

The 10% of BEA funds for the comprehensive PD plan does not include recruitment efforts. Recruitment efforts are an allowable use of BEA funds that are not within the 10% for the comprehensive PD plan.

*Resource:*

The TEA English Learner Support Division has developed a resource for [Allowable Use of Bilingual Education Allotment \(BEA\) Funds Comprehensive Professional Development Plan](#) that explains how districts who submit a bilingual exception and/or ESL waiver can utilize BEA funds for their comprehensive professional development plan. This document has been updated in November 2018 and can be found under “Resources” at the bottom of the [TEA Bilingual Education Exception and ESL Waiver Application webpage](#).

- 8. If the appropriately certified bilingual or ESL teacher is on medical leave under the Family and Medical Leave Act (FMLA), does the long-term substitute teacher need to be appropriately certified in bilingual or ESL certified? Does the long-term substitute need to be added to the bilingual exception and/or ESL waiver?**

As long as the classroom teacher (who is currently on leave) is appropriately certified for the bilingual and/or ESL program, the long-term substitute does not need to be added to the bilingual education exception and/or ESL waiver.

- 9. Do teachers in an Alternative Certification Program need to be included in the bilingual education exception or ESL waiver?**

If a teacher is in an Alternative Certification Program and has not yet obtained a bilingual education or ESL supplemental certification in addition to his/her grade level/content certification, he or she is not yet appropriately certified to teach in the bilingual education or ESL program and would be included on the exception or waiver.

- 10. If a teacher who was included in the bilingual education exception or ESL waiver application on or before November 1<sup>st</sup> obtains his or her appropriate certification during the school year, should the PEIMS codes of his/her students participating in the bilingual education or ESL program be changed immediately or at the start of the next school year?**

At the time that the teacher becomes appropriately certified for the bilingual education or ESL program, the district will adjust the students' [PEIMS codes](#) accordingly. The following PEIMS codes for students participating in a bilingual or ESL program are affected by the submission of a district's bilingual education exception and/or ESL waiver and would be adjusted **as described in the charts below (next page)**:

<b>English Learner (EL) PEIMS Coding</b>			
<b>While Teacher is Under Bilingual Education Exception or ESL Waiver</b>		<b>Once Teacher is Appropriately Certified for the Bilingual Education or ESL Program</b>	
<b>Parental Permission Code</b>	ESL = J	<b>Parental Permission Code</b>	ESL = K
	Bilingual = E		Bilingual = D
<b>Program Code</b>	ESL = 0 and Alternative Language Program = 02	<b>Program Code</b>	ESL = • Content-Based: 2 • Pull-Out: 3
	Bilingual = 0 and Alternative Language Program = 01		Bilingual = • Transitional Early Exit: 2 • Transitional Late Exit: 3 • Dual Language Immersion Two-Way: 4 • Dual Language Immersion One-Way: 5
<b>Bilingual / ESL Funding Code</b>	Alternative Language Program for ESL = BE	<b>Bilingual / ESL Funding Code</b>	ESL = BE (no change)
	Alternative Language Program for Bilingual = BE		Bilingual = • Transitional Early Exit and Transitional Late Exit: BE (no change) • Dual Language Immersion Two-Way: D1 • Dual Language Immersion One-Way: D2

<b>English Proficient (EP) Student PEIMS Coding</b>			
<b>While Teacher is Under Bilingual Education Exception or ESL Waiver</b>		<b>Once Teacher is Appropriately Certified for the Bilingual Education or ESL Program</b>	
<b>Parental Permission Code</b>	EP in ESL = H	<b>Parental Permission Code</b>	EP in ESL = H (no change)
	EP in Bilingual = 3		EP in Bilingual = 3 (no change)
	Reclassified EP in ESL or Bilingual = G		Reclassified EP in ESL or Bilingual = G (no change)
<b>Program Code</b>	ESL = 0 and Alternative Language Program = 02	<b>Program Code</b>	ESL = • Content-Based: 2 • Pull-Out: 3
	Bilingual = 0 and Alternative Language Program = 01		Bilingual = • Transitional Early Exit: 2 • Transitional Late Exit: 3 • Dual Language Immersion Two-Way: 4 • Dual Language Immersion One-Way: 5
<b>Bilingual / ESL Funding Code</b>	Alternative Language Program for ESL = BE	<b>Bilingual / ESL Funding Code</b>	ESL = BE (no change)
	Alternative Language Program for Bilingual = BE		Bilingual = • Transitional Early Exit and Transitional Late Exit: BE (no change) • Dual Language Immersion Two-Way: D1 • Dual Language Immersion One-Way: D2

Further detail on PEIMS coding is provided in the Bilingual ESL Program Association [Code Guide](#).

### **11. Do bilingual education and ESL certification requirements apply to charter schools and districts of innovation (DOI)?**

Yes, open-enrollment charter schools and districts of innovation must comply with bilingual education and ESL program certification requirements even if their general certification requirements differ.

*Resources:*

[TEA Charter Schools FAQ](#) (Question #7)

[TEA Districts of Innovation FAQ](#) (Question #9)

### **12. Do special education teachers of English learners need to be bilingual or ESL certified?**

If a special education teacher is serving a student in a general education bilingual or ESL classroom through inclusion or a resource time that is not the entire content time, the student still has access to the bilingual or ESL program through the certified classroom teacher, so the special education teacher would **not** need to be bilingual or ESL certified.

If the English learner is served in a self-contained special education classroom where he/she receives all content instruction by the special education teacher, then the teacher of the self-contained special education classroom must also be appropriately certified to provide bilingual or ESL program services. Therefore, if the self-contained special education teacher in this case is not appropriately certified, a bilingual education exception or ESL waiver would need to be filed for this classroom.

### **13. What if our district is filing a bilingual education exception and have not yet begun development of the bilingual program, particularly when applying for an exception for languages other than Spanish?**

Overall, the bilingual education exception includes two basic types of exception scenarios:

- 1) A district has a bilingual education program (in any language) and is only missing one or more of the appropriately certified teacher(s).
- 2) The district has met the requirement for providing a bilingual program (in any language) but has not yet begun the bilingual education program in the district at any grade level.

In the second scenario above, the district is planning for the number of classrooms and teachers that would be needed in order to provide the bilingual education program for the amount of English learners (ELs) with that language classification and calculates accordingly, likely by clustering the ELs with that language classification and based on appropriate teacher/student ratios.

In any language for which the district meets the minimum requirement to provide the bilingual education program but does not have the appropriately certified teachers to provide the program, a bilingual education exception is filed for that language. Of course, it is recognized that there are many languages for which a district may meet this requirement that a language certification is not yet available. The following are the languages for which there are currently bilingual education certification exams as found in TAC §233.6 and as described in this [test requirements chart](#):

- Spanish
- American Sign Language
- Arabic
- Chinese
- Japanese
- Vietnamese

Please note the following regarding submission of the bilingual education exception and PEIMS coding as it relates to Spanish and languages other than Spanish:

- As stated above, **the bilingual education exception will be filed regardless of language classification or availability of a language certification exam.**
- **For Spanish**, if the district has not yet established the bilingual education program for which they are now required, the English learners who would be eligible for the Spanish/English bilingual education program will be coded as an E for Parental Permission (indicating that the exception was filed) and 01 for Alternative Language Program to the bilingual education program.
- **For languages other than Spanish**, if the district has not yet established the bilingual education program for which they are now required, the English learners who would be eligible for that language's bilingual education program will be placed in an ESL program and coded in PEIMS as such (K for Parental Permission and either 2 or 3 for ESL Program based on the district's implementation of a content-based or pull-out model).

**14. For English learners served in an Early Education (EE) setting, where are they indicated on the bilingual education exception/ESL waiver application?**

If a bilingual education exception or ESL waiver is needed for English learners served in an EE setting, this data will be included under the prekindergarten (PK) student, classroom, and teacher data on the application.