Chapter 101. Assessment

Subchapter AA. Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments

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

§101.1001. English Language Proficiency Assessments.

In kindergarten through Grade 12, limited English proficient students, as defined by the Texas Education Code, Chapter 29, Subchapter B, shall be administered state-identified English language proficiency assessments annually in listening, speaking, reading, and writing to fulfill state requirements under the Texas Education Code, Chapter 39, Subchapter B, and federal requirements under the No Child Left Behind Act of 2001.

Source: The provisions of this §101.1001 adopted to be effective September 30, 2001, 26 TexReg 7270; amended to be effective February 17, 2005, 30 TexReg 709.

§101.1003. Role of the Language Proficiency Assessment Committee.

(a) In accordance with the Texas Education Code, §39.023(a), (b), (c), (l), and (m) and §39.027(a), the language proficiency assessment committee (LPAC) shall select the appropriate assessment option for each limited English proficient student as outlined in this subchapter.

(b) The LPAC assessment decisions must be made on an individual student basis and in accordance with administrative procedure established by the Texas Education Agency.

(c) The LPAC must document in the student's permanent record file the reason for:

(1) a postponement authorized in §101.1005 of this title (relating to Limited English Proficient Students at the Exit Level);

(2) an exemption authorized in §101.1007 of this title (relating to Limited English Proficient Students at Grades Other Than the Exit Level); and

(3) an exclusion of the student's test results from the determination of district accreditation and performance ratings authorized in §101.1010 of this title (relating to Provisions for Unschooled Limited English Proficient Asylees and Refugees).

(d) A school district shall make a reasonable effort to determine a student's previous testing history.

Source: The provisions of this §101.1003 adopted to be effective September 30, 2001, 26 TexReg 7270; amended to be effective February 22, 2010, 35 TexReg 1458.

§101.1005. Limited English Proficient Students at the Exit Level.

Limited English proficient (LEP) students are not eligible for an exemption from exit level testing requirements for graduation on the basis of limited English proficiency. However, LEP students who are recent immigrants may be granted a postponement of the administration of the exit level assessment during their first 12 months of enrollment in U.S. schools. A postponement is not permitted if a student would otherwise not be afforded the opportunity to take the exit level assessments at least one time before the student's scheduled graduation date.

Source: The provisions of this §101.1005 adopted to be effective September 30, 2001, 26 TexReg 7270; amended to be effective February 17, 2005, 30 TexReg 709; amended to be effective February 22, 2010, 35 TexReg 1458.

§101.1007. Limited English Proficient Students at Grades Other Than the Exit Level.

(a) In Grades 3-5, the language proficiency assessment committee (LPAC) shall determine whether a limited English proficient (LEP) student is administered the assessment of academic skills in English or in Spanish. A LEP student may be administered a Spanish version of the assessment of academic skills for a maximum of three years. If the LEP student is an immigrant, the total number of years of LEP exemption and years of administration of the assessment in Spanish must not exceed three.

(b) In accordance with paragraphs (1)-(4) of this subsection, certain immigrant LEP students who have had inadequate schooling outside the United States may be eligible for an exemption from the assessment of academic skills during a period not to exceed their first three school years of enrollment in U.S. schools. The term "immigrant" in this subchapter is defined as a student who has resided outside the 50 U.S. states for at least two consecutive years.

(1) In Grades 2-12, an immigrant LEP student who achieves a rating of advanced high on the state-administered English language proficiency assessment in reading during the student's first school year of enrollment in U.S. schools is not eligible for an exemption in the second or third school year of enrollment in U.S. schools. An immigrant LEP student who achieves a rating of advanced or advanced high on this assessment during the student's second school year of enrollment in U.S. schools is not eligible for an exemption in the third school year of enrollment in U.S. schools.

(2) During the first school year of enrollment in U.S. schools, the immigrant student may be granted a LEP exemption if the LPAC determines that the student has not had the schooling outside the United States necessary to provide the foundation of learning that Texas schools require and measure on the assessment, whether the foundation be in knowledge of the English language or specific academic skills and concepts in the subjects assessed.

(3) During the second and third school year of enrollment in U.S. schools, the immigrant student whose schooling outside the United States was inadequate and for whom a primary language assessment is not available may be granted a LEP exemption if the LPAC determines that the student lacks the academic language proficiency in English necessary for an assessment of academic skills in English to measure the student's academic progress in a valid, reliable manner.

(4) During the second and third school year of enrollment in U.S. schools, the immigrant student whose schooling outside the United States was inadequate and for whom a Spanish-version assessment is available is not eligible for a LEP exemption and must take the assessment in either English or Spanish unless:

(A) the student is in an English as a second language (ESL) program, which does not call for instruction in Spanish, and the LPAC determines that the student lacks the language proficiency in English and the academic instruction in Spanish and/or literacy in Spanish for the assessment in either English or Spanish to measure the student's academic progress in a valid, reliable manner; or

(B) the student is in a bilingual education program and the LPAC has documentation, including signed verification by the parent or guardian whenever possible, that there was an extensive period of time outside the United States in which the student did not attend school and that this absence of schooling resulted in such limited academic achievement and/or literacy that assessment in either English or Spanish is inappropriate as a measure for school accountability. The term "extensive period of time outside the United States," as used in this subparagraph, shall be defined in the test administration materials.

(c) Students exempted under subsection (b) of this section shall be administered assessments in subjects and grades required by federal law and regulations in accordance with linguistically accommodated testing procedures delineated in the test administration materials.

(d) A LEP student whose parent or guardian has declined the services required by the Texas Education Code, Chapter 29, Subchapter B, is not eligible for an exemption under this section, an exit level test postponement under §101.1005 of this title (relating to Limited English Proficient Students at the Exit Level), or an exclusion of test results from the determination of district accreditation and performance

ratings for unschooled asylees or refugees under §101.1010 of this title (relating to Provisions for Unschooled Limited English Proficient Asylees and Refugees). The student shall take the assessments of academic skills in English and the English language proficiency assessments required by this subchapter.

(e) School districts may administer the assessment of academic skills in Spanish to a student who is not identified as limited English proficient but who participates in a bilingual program if the LPAC determines the assessment in Spanish to be the most appropriate measure of the student's academic progress. However, the student may not be administered the Spanish-version assessment for longer than three years.

Source: The provisions of this §101.1007 adopted to be effective September 30, 2001, 26 TexReg 7270; amended to be effective February 17, 2005, 30 TexReg 709; amended to be effective May 11, 2008, 33 TexReg 3630; amended to be effective February 22, 2010, 35 TexReg 1458.

§101.1009. Limited English Proficient Students Who Receive Special Education Services.

(a) The provisions of this subchapter apply to limited English proficient (LEP) students who receive special education services except as otherwise specified in this section.

(b) The admission, review, and dismissal (ARD) committee in conjunction with the language proficiency assessment committee (LPAC) shall make decisions regarding the selection of assessments and appropriate accommodations for LEP students who receive special education services. The ARD committee shall document the decisions in the student's individualized education program, and the LPAC shall document the decisions in the student's permanent record file.

(c) In rare cases, the ARD committee in conjunction with the LPAC may determine that it is not appropriate for a LEP student who receives special education services to participate in an English language proficiency assessment required by §101.1001 of this title (relating to English Language Proficiency Assessments) for reasons associated with the student's particular disability. Specific documentation of the reason for the decision must be maintained in accordance with the documentation requirements in subsection (b) of this section.

(d) The provisions of §101.1007(b) and (c) of this title (relating to Limited English Proficient Students at Grades Other Than the Exit Level) apply to the state's general and modified assessments of academic skills.

(e) A LEP student who receives special education services and whose parent or guardian has declined the services required by the Texas Education Code, Chapter 29, Subchapter B, is not eligible for an exemption under §101.1007 of this title, an exit level test postponement under §101.1005 of this title (relating to Limited English Proficient Students at the Exit Level), or an exclusion of test results from the determination of district accreditation and performance ratings for unschooled asylees or refugees under §101.1010 of this title (relating to Provisions for Unschooled Limited English Proficient Asylees and Refugees).

Source: The provisions of this §101.1009 adopted to be effective September 30, 2001, 26 TexReg 7270; amended to be effective February 17, 2005, 30 TexReg 709; amended to be effective May 11, 2008, 33 TexReg 3630; amended to be effective February 22, 2010, 35 TexReg 1458.

§101.1010. Provisions for Unschooled Limited English Proficient Asylees and Refugees.

(a) The provisions of this subchapter apply to eligible limited English proficient (LEP) students who are unschooled asylees or refugees except as specified in subsection (c) of this section. In accordance with the Texas Education Code (TEC), §39.027(a)(3), "unschooled asylee or refugee" means a student who:

(1) enrolled in a U.S. school as:

(A) an asylee as defined by 45 Code of Federal Regulations, §400.41; or

(B) a refugee as defined by 8 United States Code, §1101;

(2) has a visa issued by the United States Department of State with a Form I-94 Arrival/Departure record, or a successor document, issued by the United States Citizenship and Immigration Services that is stamped with "Asylee," "Refugee," or "Asylum"; and

(3) as a result of inadequate schooling outside the United States, lacks the necessary foundation in the essential knowledge and skills of the curriculum prescribed under the TEC, §28.002, as determined by the language proficiency assessment committee (LPAC) established under the TEC, §29.063.

(b) An eligible student who is enrolled in a U.S. school as an unschooled asylee or refugee and who is beyond the third school year of enrollment in U.S. schools in Grades 3-10 or who is beyond the first 12 months of enrollment in U.S. schools at the exit level is required to participate in assessments of academic skills in all subjects and grades required by state or federal law and regulations.

(c) The test results of an eligible student who is an unschooled asylee or refugee and who is beyond the LEP exemption period in Grades 3-10 or the exit level postponement period may be excluded from the determination of district accreditation and performance ratings under the TEC, Chapter 39, through the student's fifth school year of enrollment in U.S. schools in accordance with LPAC decision-making procedures outlined in the test administration materials. In subjects and grades in which testing is required by federal law and regulations, the student whose test results are excluded shall be administered assessments using linguistically accommodated testing procedures delineated in the test administration materials. For purposes of LPAC determinations under this subsection, inadequate schooling outside the United States is defined as little or no formal schooling outside the United States such that the student lacked basic literacy in his or her primary language upon enrollment in school in the United States.

Source: The provisions of this §101.1010 adopted to be effective February 22, 2010, 35 TexReg 1458.

§101.1011. Student Success Initiative Grade Advancement Requirements.

Limited English proficient (LEP) students are subject to the grade advancement requirements of the Student Success Initiative authorized under the Texas Education Code (TEC), §28.0211, unless the LEP students meet the exemption criteria under §101.1007 of this title (relating to Limited English Proficient Students at Grades Other Than the Exit Level), qualify for the provisions for unschooled asylees or refugees under §101.1010(c) of this title (relating to Provisions for Unschooled Limited English Proficient Asylees and Refugees), or are otherwise not subject to the requirements established for students receiving special education services under §101.2003(d) of this title (relating to Grade Advancement Testing Requirements).

Source: The provisions of this §101.1011 adopted to be effective February 22, 2010, 35 TexReg 1458.