

ATTACHMENT I

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

Texas Education Code, §29.051, State Policy:

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

Texas Education Code, §29.054, Exception:

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

students of limited English proficiency, including hiring teaching personnel under a bilingual emergency permit.

Texas Education Code, §29.056, Enrollment of Students in Program (excerpts):

- (a) The agency shall establish standardized criteria for the identification, assessment, and classification of students of limited English proficiency eligible for entry into the program or exit from the program. The student's parent must approve a student's entry into the program, exit from the program, or placement in the program. The school district or parent may appeal the decision under Section 29.064. The criteria for identification, assessment, and classification may include:
 - (1) results of a home language survey conducted within four weeks of each student's enrollment to determine the language normally used in the home and the language normally used by the student, conducted in English and the home language, signed by the student's parents if the student is in kindergarten through grade 8 or by the student if the student is in grades 9 through 12, and kept in the student's permanent folder by the language proficiency assessment committee;
 - (2) the results of an agency-approved English language proficiency test administered to all students identified through the home survey as normally speaking a language other than English to determine the level of English language proficiency, with students in kindergarten or grade 1 being administered an oral English proficiency test and students in grades 2 through 12 being administered an oral and written English proficiency test; and
 - (3) the results of an agency-approved proficiency test in the primary language administered to all students identified under Subdivision (2) as being of limited English proficiency to determine the level of primary language proficiency, with students in kindergarten or grade 1 being administered an oral primary language proficiency test and students in grades 2 through 12 being administered an oral and written primary language proficiency test.
- (g) A district may transfer a student of limited English proficiency out of a bilingual education or special language program for the first time or a subsequent time if the student is able to participate equally in a regular all-English instructional program as determined by:
 - (1) agency-approved tests administered at the end of each school year to determine the extent to which the student has developed oral and written language proficiency and specific language skills in [~~both the student's primary language and~~] English;
 - (2) satisfactory performance on the reading assessment instrument under Section 39.023(a) or an English language arts assessment instrument under Section 39.023(c), as applicable, with the assessment instrument administered in English, or, if the student is enrolled in the first or second grade, an achievement score at or above the 40th percentile in the reading and language arts sections of an English standardized test approved by the agency; and
 - (3) agency-approved [~~other indications of a student's overall progress, including~~] criterion-referenced tests and the results of a [~~test scores,~~] subjective teacher evaluation [~~, and parental evaluation~~].
- (h) If later evidence suggests that a student who has been transferred out of a bilingual education or special language program has inadequate English proficiency and

achievement, the language proficiency assessment committee may reenroll the student in the program. Classification of students for reenrollment must be based on the criteria required by this section.

Texas Education Code, §29.0561, Evaluation of Transferred Students; Reenrollment:

- (a) The language proficiency assessment committee shall reevaluate a student who is transferred out of a bilingual education or special language program under Section 29.056(g) if the student earns a failing grade in a subject in the foundation curriculum under Section 28.002(a)(1) during any grading period in the first two school years after the student is transferred to determine whether the student should be reenrolled in a bilingual education or special language program.
- (b) During the first two school years after a student is transferred out of a bilingual education or special language program under Section 29.056(g), the language proficiency assessment committee shall review the student's performance and consider:
 - (1) the total amount of time the student was enrolled in a bilingual education or special language program;
 - (2) the student's grades each grading period in each subject in the foundation curriculum under Section 28.002(a)(1);
 - (3) the student's performance on each assessment instrument administered under Section 39.023(a) or (c);
 - (4) the number of credits the student has earned toward high school graduation, if applicable; and
 - (5) any disciplinary actions taken against the student under Subchapter A, Chapter 37.
- (c) After an evaluation under this section, the language proficiency assessment committee may require intensive instruction for the student or reenroll the student in a bilingual education or special language program.

Texas Education Code, §29.060, Preschool, Summer School, and Extended Time Programs:

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

- (d) A school district may establish on a full- or part-time basis other summer school, extended day, or extended week bilingual education or special language programs for students of limited English proficiency and may join with other districts in establishing the programs.
- (e) The programs required or authorized by this section may not be a substitute for programs required to be provided during the regular school year.
- (f) The legislature may appropriate money from the foundation school fund for support of a program under Subsection (a).

Texas Education Code, §7.028, Limitation on Compliance Monitoring:

- (a) Except as provided by Section 29.001(5), 29.010(a), 39.074, or 39.075, the agency may monitor compliance with requirements applicable to a process or program provided by a school district, campus, program, or school granted charters under Chapter 12, including the process described by Subchapter F, Chapter 11, or a program described by Subchapter B, C, D, E, F, H, or I, Chapter 29, Subchapter A, Chapter 37, or Section 38.003, and the use of funds provided for such a program under Subchapter C, Chapter 42, only as necessary to ensure:
 - (1) compliance with federal law and regulations;
 - (2) financial accountability, including compliance with grant requirements; and
 - (3) data integrity for purposes of:
 - (A) the Public Education Information Management System (PEIMS); and
 - (B) accountability under Chapter 39.
- (b) The board of trustees of a school district or the governing body of an open-enrollment charter school has primary responsibility for ensuring that the district or school complies with all applicable requirements of state educational programs.