

ATTACHMENT II  
Text of Adopted Revisions to 19 TAC

**Chapter 89. Adaptations for Special Populations**

**Subchapter BB. Commissioner's Rules Concerning State Plan for Educating Limited English Proficient Students**

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

- (a) Each school district which has an enrollment of 20 or more limited English proficient students 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 limited English proficient students 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 district shall provide a bilingual education program by offering a dual language program in prekindergarten through the elementary grades, as described in §89.1210 of this title (relating to Program Content and Design).
- (c) 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.
- (d) All limited English proficient students for whom a district is not required to offer a bilingual education program shall be provided an English as a second language program as described in subsection (e) of this section, regardless of the students' grade levels and home language, and regardless of the number of such students.
- (e) A district shall provide an English as a second language program by offering an English as a second language program as described in §89.1210 of this title (relating to Program Content and Design).
- (f) Districts may join with other districts to provide bilingual education or English as a second language programs.
- ~~(g) Districts which are unable to provide a bilingual education program as required by subsection (a) of this section shall request from the commissioner of education an exception to the bilingual education program and approval to offer an alternative program. Approval of exceptions to the bilingual education program shall be negotiated on an individual basis and shall be valid for only the school year for which it was negotiated. This request will be submitted by a date determined by the commissioner of education and shall include:
  - ~~(1) a statement of the reasons the district is unable to offer the bilingual education program with supporting documentation;~~
  - ~~(2) a description of the proposed alternative modified bilingual education or intensive English as a second language programs to meet the affective, linguistic, and cognitive needs of the limited English proficient students, including the manner in 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);~~
  - ~~(3) an assurance that certified personnel available in the 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 limited English proficient students with beginning levels of English proficiency are served on a priority basis;~~
  - ~~(4) a description of the training program which the district will provide to improve the skills of the staff which is assigned to implement the proposed alternative program, and an assurance that at least 10% of the bilingual education allotment shall be used to carry out this training program; and~~~~

~~[(5) a description of the actions the district will take to ensure that the program required under subsection (a) of this section will be provided the subsequent year, including its plans for recruiting and training an adequate number of teachers to eliminate the need for subsequent exceptions.]~~

~~[(h) Districts which, because of an insufficient number of certified teachers, are unable to provide an English as a second language program as required by subsection (d) of this section shall request from the commissioner of education a waiver of the certification requirements for the teachers who will provide the instruction in English as a second language for the limited English proficient students. Approval of waivers of certification requirements shall be negotiated on an individual basis and shall be valid for only the school year for which they were negotiated. This request will be submitted by a date determined by the commissioner of education and shall include:]~~

~~[(1) a statement of the reasons the district is unable to provide a sufficient number of certified teachers to offer the English as a second language program:]~~

~~[(2) a description of the manner in which the teachers in the English as a second language program will meet the affective, linguistic, and cognitive needs of the limited English proficient student, including the manner by 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):]~~

~~[(3) an assurance that certified personnel available in the district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels in the elementary school campus, and on the basis of need for secondary campuses, to ensure that the linguistic and academic needs of the limited English proficient students with the lower levels of English proficiency are served on a priority basis:]~~

~~[(4) the names of the teachers not on permit who are assigned to implement the English as a second language program and estimated date for the completion of the English as a second language endorsement for each teacher under a waiver:]~~

~~[(5) a description of the training program which the district will provide to improve the skills of the staff which is assigned to implement the proposed English as a second language program, and an assurance that at least 10% of the bilingual education allotment shall be used to carry out this training; and]~~

~~[(6) a description of the actions the district will take to ensure that the program required under subsection (d) of this section will be provided the subsequent year, including its plans for recruiting and training an adequate number of teachers to eliminate the need for subsequent waivers:]~~

### §89.1207. Exceptions and Waivers.

#### (a) Bilingual education program.

~~(1) Exceptions. A 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) 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 October 1 and shall include:~~

~~(A) a statement of the reasons the district is unable to offer the bilingual education program with supporting documentation;~~

~~(B) a description of the proposed alternative modified bilingual education or intensive English as a second language programs designed to meet the affective, linguistic, and cognitive needs of the limited English proficient students, 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);

- (C) an assurance that certified teachers available in the 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 limited English proficient students with beginning levels of English proficiency are served on a priority basis;
- (D) a description of the training program which the district will provide to improve the skills of the certified teachers that are assigned to implement the proposed alternative program, and an assurance that at least 10% of the bilingual education allotment shall be used to fund this training program; and
- (E) a description of the actions the district will take to ensure that the program required under §89.1205(a) of this title will be provided the subsequent year, including its plans for recruiting and training an adequate number of certified teachers to eliminate the need for subsequent exceptions and measurable targets for the subsequent year.
- (2) Approval of exceptions. Bilingual education program exceptions will be granted by the commissioner of education if the requesting district:

  - (A) meets or exceeds the state average for limited English proficient student performance on the required state assessments;
  - (B) meets the requirements and measurable targets of the action plan described in paragraph (1)(E) 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 Spanish programs when compared to the number of exceptions granted the previous year.
- (3) Denial of exceptions. A district denied a bilingual education program exception must submit to the commissioner of education a detailed action plan for complying with required regulations for the following school year.
- (4) Appeals. A 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.
- (5) Special accreditation investigation. The commissioner may authorize a special accreditation investigation under the TEC, §39.075, if a district:

  - (A) is denied a bilingual education program exception for more than three consecutive years;  
or
  - (B) is granted an exception based on meeting or exceeding the state average for limited English proficient student performance on the required state assessments but has excessive numbers of allowable exemptions from the required state assessments.
- (6) Sanctions. Based on the results of a special accreditation investigation, the commissioner may take appropriate action under the TEC, §39.131.
- (b) English as a second language program.

  - (1) Waivers. A district that is unable to provide an English as a second language program as required by §89.1205(d) of this title because of an insufficient number of certified teachers shall request from the commissioner of education a waiver of the certification requirements for each teacher who will provide instruction in English as a second language for limited English proficient students. 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 English as a second language program waiver must be submitted by October 1 and shall include;

- (A) a statement of the reasons the district is unable to provide a sufficient number of certified teachers to offer the English as a second language program;
  - (B) a description of the manner in which the teachers in the English as a second language program will meet the affective, linguistic, and cognitive needs of the limited English proficient students, 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;
  - (C) an assurance that certified teachers available in the district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels in the elementary school campus, and on the basis of need for secondary campuses, to ensure that the linguistic and academic needs of the limited English proficient students with the lower levels of English proficiency are served on a priority basis;
  - (D) the name of each teacher not on permit who is assigned to implement the English as a second language program and estimated date for the completion of the English as a second language supplemental certification for each teacher under a waiver, which must be completed by the end of the school year for which the waiver was requested;
  - (E) a description of the training program which the district will provide to improve the skills of the certified teachers that are assigned to implement the proposed English as a second language program, and an assurance that at least 10% of the bilingual education allotment shall be used to fund this training; and
  - (F) a description of the actions the district will take to ensure that the program required under §89.1205(d) of this title will be provided the subsequent year, including its plans for recruiting and training an adequate number of certified teachers to eliminate the need for subsequent waivers.
- (2) Approval of waivers. English as a second language waivers will be granted by the commissioner of education if the requesting district:
- (A) meets or exceeds the state average for limited English proficient student performance on the required state assessments; or
  - (B) meets the requirements and measurable targets of the action plan described in paragraph (1)(D) of this subsection submitted the previous year and approved by the TEA.
- (3) Denial of waivers. A district denied an English as a second language program waiver must submit to the commissioner of education a detailed action plan for complying with required regulations for the following school year.
- (4) Appeals. A district denied an English as a second language 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.
- (5) Special accreditation investigation. The commissioner may authorize a special accreditation investigation under the TEC, §39.075, if a district:
- (A) is denied an English as a second language waiver for more than three consecutive years;  
or
  - (B) is granted a waiver based on meeting or exceeding the state average for limited English proficient student performance on the required state assessments but has excessive numbers of allowable exemptions from the required state assessments.
- (6) Sanctions. Based on the results of a special accreditation investigation, the commissioner may take appropriate action under the TEC, §39.131.

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

- (a) Districts shall by local board policy establish and operate a language proficiency assessment committee. The district shall have on file policy and procedures for the selection, appointment, and training of members of the language proficiency assessment committee(s).
- (b) In districts required to provide a bilingual education program, the language proficiency assessment committee shall be composed of the membership described in the Texas Education Code, §29.063. If the district does not have an individual in one or more of the school job classifications required, the district shall designate another professional staff member to serve on the language proficiency assessment committee. The district may add other members to the committee in any of the required categories.
- (c) In districts and grade levels not required to provide a bilingual education program, the language proficiency assessment committee shall be composed of one or more professional personnel and a parent of a limited English proficient student participating in the program designated by the district.
- (d) No parent serving on the language proficiency assessment committee shall be an employee of the school district.
- (e) A 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 limited English proficient students.
- (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 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 limited English proficient students identified in accordance with §89.1225(f) of this title (relating to Testing and Classification of Students), and shall:
  - (1) designate the language proficiency level of each limited English proficient student in accordance with the guidelines issued pursuant to §89.1210(b) and (d) of this title (relating to Program Content and Design);
  - (2) designate the level of academic achievement of each limited English proficient student;
  - (3) designate, subject to parental approval, the initial instructional placement of each limited English proficient student in the required program;
  - (4) facilitate the participation of limited English proficient students in other special programs for which they are eligible provided by the district with either state or federal funds; and
  - (5) classify students as English proficient in accordance with the criteria described in §89.1225(h) of this title (relating to Testing and Classification of Students), and recommend their exit from the bilingual education or English as a second language program.
- (h) Before the administration of the state criterion-referenced test each year, the language proficiency assessment committee shall determine the appropriate assessment option for each limited English proficient student as outlined in Chapter 101, Subchapter AA, of this title (relating to Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments). The assessment options shall be:
  - (1) administration of the English version criterion-referenced test;
  - (2) administration of the Spanish version criterion-referenced test; or
  - (3) for certain immigrant students, exemption from the criterion-referenced test.
- (i) In determining the appropriate assessment option, the language proficiency assessment committee shall consider the following criteria for each student:

- (1) academic program participation (bilingual education or English as a second language) and language of instruction;
  - (2) language proficiency, including literacy, in English and/or Spanish;
  - (3) number of years enrolled in U.S. schools;
  - (4) previous testing history;
  - (5) level achieved on ~~in~~ the state English language proficiency assessment in reading [proficiency tests in English (RPTE)] ;
  - (6) consecutive years of residence outside of the 50 U.S. states; and
  - (7) schooling outside the U.S.
- (j) The language proficiency assessment committee shall give written notice to the student's parent advising that the student has been classified as limited English proficient and requesting approval to place the student in the required bilingual education or English as a second language program. The notice shall include information about the benefits of the bilingual education or English as a second language program for which the student has been recommended and that it is an integral part of the school program.
- (k) Pending parent approval of a limited English proficient student's entry into the bilingual education or English as a second language program recommended by the language proficiency assessment committee, the district shall place the student in the recommended program, but may count only limited English proficient students with parental approval for bilingual education allotment.
- (l) The language proficiency assessment committee shall monitor the academic progress of each student who has exited from a bilingual or English as a second language program in accordance with the Texas Education Code, §29.0561. [within the past two years to determine whether the student is academically successful as defined in §89.1225(j) of this title (relating to Testing and Classification of Students). Those students who are not academically successful due to limited English proficiency shall be reclassified as limited English proficient (LEP), and shall be recommended for participation in a bilingual education or English as a second language program. Students who are not reclassified as LEP may be placed in compensatory and accelerated instruction or other special language program which addresses their needs.]
- (m) The student's permanent record shall contain documentation of all actions impacting the limited English proficient student. This documentation shall include:
- (1) the identification of the student as limited English proficient;
  - (2) the designation of the student's level of language proficiency;
  - (3) the recommendation of program placement;
  - (4) parental approval of entry or placement into the program;
  - (5) the dates of entry into, and placement within, the program;
  - (6) the dates of exemptions from the criterion-referenced test, criteria used for this determination, and additional instructional interventions provided to students to ensure adequate yearly progress;
  - (7) the date of exit from the program and parent notification; and
  - (8) the results of monitoring for academic success, including students formerly classified as limited English proficient, as required under the Texas Education Code, §29.063(c)(4).

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

- (a) For identifying limited English proficient students, 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 measure, or another test approved by TEA, unless the norm-referenced measure is not valid in accordance with subsection (f)(2)(C) of this section.
- (b) Districts which provide a bilingual education program shall administer an oral language proficiency test in the home language of the students who are eligible for being served in the bilingual education program. If the home language of the students is Spanish, the district shall administer the Spanish version of the TEA-approved oral language proficiency test which was administered in English. If the home language of the students is other than Spanish, the district shall determine the students' level of proficiency using informal oral language assessment measures.
- (c) All the oral language proficiency testing shall be administered by professionals or paraprofessionals who are proficient in the language of the test and trained in language proficiency testing.
- (d) The grade levels and the scores on each test which shall identify a student as limited English proficient shall be established by TEA. The commissioner of education shall review the approved list of tests, grade levels, and scores annually and update the list.
- (e) Students with a language other than English shall be administered the required oral language proficiency test within four weeks of their enrollment. Norm-referenced assessment instruments, however, may be administered within the established norming period.
- (f) For entry into a bilingual education or English as a second language program, a student shall be identified as limited English proficient using the following criteria.
- (1) At prekindergarten through Grade 1, the score on the English oral language proficiency test is below the level designated for indicating limited English proficiency under subsection (d) of this section.
- (2) At Grades 2-12:
- (A) the student's score on the English oral language proficiency test is below the level designated for indicating limited English proficiency under subsection (d) of this section;
- (B) the student's score on the reading and language arts sections of the TEA-approved norm-referenced measure at his or her grade level is below the 40th percentile; or
- (C) the student's ability in English is so limited that the administration, at his or her grade level, of the reading and language arts sections of a TEA-approved norm-referenced assessment instrument or other test approved by TEA is not valid.
- (3) In the absence of data required in paragraph (2)(B) of this subsection, evidence that the student is not academically successful as defined in subsection (j) of this section is required.
- (4) The admission review and dismissal (ARD) committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and designated level of performance for indicating limited English proficiency as required under subsection (d) of this section for students for whom those tests would be inappropriate as part of the individualized education program (IEP). The decision for entry into a bilingual education or English as a second language program shall be determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee).
- (g) Within the four weeks of their initial enrollment in the district, students shall be identified as limited English proficient and enrolled into the required bilingual education or English as a second language program. Prekindergarten and kindergarten students preregistered in the spring shall be identified as limited English proficient and enrolled in the required bilingual education or English as a second language program within four weeks of the start of the school year in the fall.

- (h) For exit from a bilingual education or English as a second language program, a student may be classified as English proficient at the end of the school year in which a student would be able to participate equally in a regular, all-English, instructional program. This determination shall be based upon all of the following:
- (1) TEA-approved tests that measure the extent to which the student has developed oral and written language proficiency and specific language skills in English;
  - (2) satisfactory performance on the reading assessment instrument under the Texas Education Code, §39.023(a), or a TEA-approved ~~an~~ English language arts assessment instrument administered in English, or a score at or above the 40th percentile on both the English reading and the English language arts sections of a TEA-approved norm-referenced assessment instrument for a student who is enrolled in Grade 1 or 2; and
  - (3) TEA-approved criterion-referenced written tests when available and the results of a subjective teacher evaluation.
- ~~[(1) This determination shall be based upon tests that measure the extent to which the student has developed oral and written language proficiency and specific language skills in both the student's primary language (for students enrolled in bilingual education) and English, and one of the following:]~~
- ~~[(A) meeting state performance standards for the English language criterion-referenced assessment instrument for reading and writing (when available) required in the Texas Education Code (TEC), §39.023, at grade level; or]~~
  - ~~[(B) scoring at or above the 40th percentile on both the English reading and the English language arts sections of a TEA-approved norm-referenced assessment instrument.]~~
- ~~[(2) In making this determination, districts shall also consider other indications of a student's overall progress, including criterion-referenced test scores, subjective teacher evaluation, and parental evaluation.]~~
- (i) A student may not be exited from the bilingual education or English as a second language program in prekindergarten or kindergarten [through Grade 1] . A district must ensure that limited English proficient students are prepared to meet academic standards required by TEC, §28.0211.
- (j) For determining whether a student who has been exited from a bilingual education or English as a second language program is academically successful, the following criteria shall be used at the end of the school year:
- (1) the student meets state performance standards in English of the criterion-referenced assessment instrument required in the Texas Education Code, §39.023, for the grade level as applicable; and
  - (2) the student has passing grades in all subjects and courses taken.
- (k) The ARD committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and performance standard requirement for exit under subsection (h) of this section for students for whom those tests would be inappropriate as part of the IEP. The decision to exit a student who receives both special education and special language services from the bilingual education or English as a second language program is determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with applicable provisions of subsection (h) of this section.

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

Summer school programs that are provided under the Texas Education Code, §29.060, for children of limited English proficiency who will be eligible for admission to kindergarten or first grade at the beginning of the next school year shall be implemented in accordance with this section.

- (1) Purpose of summer school programs.

- (A) Limited English proficient students shall have an opportunity to receive special instruction designed to prepare them to be successful in kindergarten and first grade.
  - (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 limited English proficient students in accordance with §89.1210(c) and §89.1210(e) of this title (relating to Program Content and Design).
- (2) Establishment of, and eligibility for, the program.
- (A) Each district required to offer a bilingual or special language program in accordance with the Texas Education Code, §29.053, shall offer the summer program. Programs under this subsection for students who will be in bilingual education kindergarten and first grade programs shall be bilingual education.
  - (B) To be eligible for enrollment, a student must be eligible for admission to kindergarten or to the first grade at the beginning of the next school year and must be limited English proficient.
  - (C) Limited English proficiency shall be determined by screening students using informal oral language inventories or oral proficiency instruments approved by the commissioner of education, or other appropriate instruments.
- (3) Operation of the program.
- (A) Enrollment in the program is optional with the parents of the student.
  - (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 district is not required to provide transportation for the summer program.
  - (E) Teachers shall possess certification or endorsement as required in the Texas Education Code, §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 district may join with other 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 Texas Education Code, §29.153.
- (4) Funding and records for programs.
- (A) A district shall use state and local funds for program purposes. Districts may use federal funds, consistent with requirements for the expenditure of federal funds, for the program.
    - (i) Available funds appropriated by the legislature for the support of summer school programs provided under the Texas Education Code, §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 of education. The allotment per unit shall be determined by the commissioner based on funds available.

- (iii) Any district required to offer the program under paragraph (2)(A) of this subsection that has less than ten students district-wide desiring to participate is not required to operate the program. However, those districts must demonstrate that they have aggressively attempted to encourage student participation.
- (iv) Payment to 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 of education in order for a district to be eligible for funding.
- ~~[(v) Districts shall apply to the commissioner of education for funding of summer school programs operated under this subsection. Applications for funding shall contain the number of students who will participate in the program and other information necessary to assure the commissioner that programs will be operated in accordance with this subsection.]~~

(B) A district shall maintain records of eligibility, attendance, and progress of students.

**§89.1260. Monitoring of Programs and Enforcing Law and Commissioner's Rules.**

- ~~[(a) Texas Education Agency (TEA) staff who are trained in assessing bilingual education and English as a second language programs shall monitor each school district in the state and enforce this subchapter in accordance with the Texas Education Code, §29.062 and §42.153.]~~
- ~~[(b) To ensure a comprehensive monitoring and assessment effort of each district at least every three years, data reported by the district in the Public Education Information Management System (PEIMS), data required by the commissioner of education, and data gathered through on-site monitoring will be used.]~~