# Chapter 101. Assessment

## Subchapter AA. Commissioner's Rules Concerning the Participation of English Language Learners in State Assessments

*Statutory Authority: The provisions of this Subchapter AA issued under the Texas Education Code, §§39.023, 39.025, and 39.027, unless otherwise noted.*

## Division 1. Assessments of English Language Proficiency and Academic Content for English Language Learners

### §101.1001. Scope of Rules.

(a) Except as specified in subsection (b) of this section, the provisions of this division shall apply to all students.

(b) The provisions of §101.1005(b)(1)-(2) of this title (relating to Assessments of Achievement in Academic Content Areas and Courses) and §101.1007 of this title (relating to Assessment Provisions for Graduation) shall apply beginning with students first enrolled in Grade 9 or below in the 2011-2012 school year.

*Source: The provisions of this §101.1001 adopted to be effective December 22, 2011, 36 TexReg 8521.*

### §101.1003. English Language Proficiency Assessments.

(a) In Kindergarten-Grade 12, an English language learner (ELL), as defined by the Texas Education Code (TEC), Chapter 29, Subchapter B, as a student of limited English proficiency, shall be administered state-identified English language proficiency assessments annually in listening, speaking, reading, and writing to fulfill state requirements under the TEC, Chapter 39, Subchapter B, and federal requirements.

(b) In rare cases, the admission, review, and dismissal (ARD) committee in conjunction with the language proficiency assessment committee (LPAC) may determine that it is not appropriate for an ELL who receives special education services to participate in an English language proficiency assessment required by subsection (a) of this section for reasons associated with the student's particular disability. The ARD committee shall document the decisions and justifications in the student's individualized education program, and the LPAC shall document the decisions and justifications in the student's permanent record file.

(c) In the case of an ELL who receives special education services, the ARD committee in conjunction with the LPAC shall determine and document the need for allowable testing accommodations in accordance with administrative procedures established by the Texas Education Agency.

*Source: The provisions of this §101.1003 adopted to be effective December 22, 2011, 36 TexReg 8521.*

### §101.1005. Assessments of Achievement in Academic Content Areas and Courses.

(a) The language proficiency assessment committee (LPAC) shall select the appropriate assessment option for each English language learner (ELL) in accordance with this subchapter. For each ELL who receives special education services, the student's admission, review, and dismissal (ARD) committee in conjunction with the student's LPAC shall select the appropriate assessments. The LPAC shall document the decisions and justifications in the student's permanent record file, and the ARD committee shall document the decisions and justifications in the student's individualized education program. Assessment decisions shall be made on an individual student basis and in accordance with administrative procedures established by the Texas Education Agency (TEA).

(b) An ELL shall participate in the Grades 3-8 and end-of-course assessments as required by the Texas Education Code (TEC), §39.023(c). Except as specified in paragraphs (1)-(3) of this subsection, an ELL shall be administered the general form of the English-version state assessment.

(1) A Spanish-speaking ELL in Grades 3-5 may be administered the state's Spanish-version assessment if an assessment in Spanish will provide the most appropriate measure of the student's academic progress.

(2) An ELL in Grade 3 or higher may be administered the linguistically accommodated English version of the state's mathematics, science, or social studies assessment if:

(A) a Spanish-version assessment does not exist or is not the most appropriate measure of the student's academic progress;

(B) the student has not yet demonstrated English language proficiency in reading as determined by the assessment under §101.1003 of this title (relating to English Language Proficiency Assessments); and

(C) the student has been enrolled in U.S. schools for three school years or less or qualifies as an unschooled asylee or refugee enrolled in U.S. schools for five school years or less.

(3) In certain cases, an ELL who receives special education services may, as a result of his or her particular disabling condition, qualify to be administered an alternative assessment instrument based on alternative achievement standards.

(c) In accordance with the TEC, §39.027(a-1), an unschooled asylee or refugee is a student who:

(1) enrolled in a U.S. school as an asylee as defined by 45 Code of Federal Regulations §400.41 or a refugee as defined by 8 United States Code §1101;

(2) has 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 LPAC.

(d) For purposes of LPAC determinations in subsection (c) of this section, inadequate schooling outside the United States is defined as little or no formal schooling outside the United States such that the asylee or refugee lacked basic literacy in his or her primary language upon enrollment in school in the United States.

(e) The LPAC shall, in conjunction with the ARD committee if the ELL is receiving special education services under the TEC, Chapter 29, Subchapter A, determine and document any allowable testing accommodations for assessments under this section in accordance with administrative procedures established by the TEA.

(f) An ELL whose parent or guardian has declined the services required by the TEC, Chapter 29, Subchapter B, is not eligible for special assessment, accommodation, or accountability provisions made available to ELLs on the basis of limited English proficiency.

(g) 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.

(h) Policies for including the academic performance of an ELL in state and federal accountability measures, which will take into account the second language acquisition developmental needs of this student population, shall be delineated in the official TEA publications required by Chapter 97 of this title (relating to Planning and Accountability).

*Source: The provisions of this §101.1005 adopted to be effective December 22, 2011, 36 TexReg 8521.*

**§101.1007. Assessment Provisions for Graduation.**

(a) Although an English language learner (ELL) shall not be exempt from taking an end-of-course assessment for reasons associated with limited English proficiency or inadequate schooling outside the United States, special provisions under subsection (b) of this section shall apply to an ELL enrolled in an English I or II course or an English for Speakers of Other Languages (ESOL) I or II course if the ELL:

(1) has been enrolled in U.S. schools for three school years or less or qualifies as an unschooled asylee or refugee enrolled in U.S. schools for five school years or less; and

(2) the student has not yet demonstrated English language proficiency in reading as determined by the assessment under §101.1003 of this title (relating to English Language Proficiency Assessments).

(b) Concerning the applicable English I or English II assessment in which the student is enrolled, an ELL who meets the eligibility criteria in subsection (a) of this section shall not be required to:

(1) use the assessment score as part of the cumulative score for graduation;

(2) retake the assessment each time it is administered if the student passes the course but fails to achieve the established minimum score on the assessment; or

(3) have the score on the assessment count for 15% of the student's final grade in the course.

*Source: The provisions of this §101.1007 adopted to be effective December 22, 2011, 36 TexReg 8521.*

## Division 2. Grade 10 and Exit-Level Assessments for Certain English Language Learners

### §101.1021. Scope of Rules.

Beginning with the 2011-2012 school year, the provisions of this division shall apply only to students first enrolled in Grade 9 or higher prior to the 2011-2012 school year, or first enrolled in Grade 10 or higher in the 2011-2012 school year.

*Source: The provisions of this §101.1021 adopted to be effective December 22, 2011, 36 TexReg 8521.*

### §101.1023. English Language Learners at the Exit Level.

English language learners (ELLs) are not eligible for an exemption from exit-level testing requirements for graduation on the basis of limited English proficiency. However, ELLs 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. The language proficiency assessment committee shall document the reason for the postponement in the student's permanent record file.

*Source: The provisions of this §101.1023 adopted to be effective December 22, 2011, 36 TexReg 8521.*

### §101.1025. English Language Learners in Grade 10.

(a) In accordance with paragraphs (1)-(3) of this subsection, certain English language learners (ELLs) who have had inadequate schooling outside the United States may be eligible for a limited English proficiency (LEP) exemption from the assessment of academic skills during a period not to exceed their first three school years of enrollment in U.S. schools.

(1) An ELL who achieves a rating of advanced high on the state-administered English language proficiency assessment in reading under §101.1003 of this title (relating to English Language Proficiency Assessments) 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 ELL 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 student may be granted a LEP exemption if the language proficiency assessment committee (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 student whose schooling outside the United States was inadequate 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.

(b) The reason for a LEP exemption granted to a student shall be documented by the LPAC in the student's permanent record file.

(c) Students exempted under subsection (a) 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) An ELL 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 or an exit-level test postponement under §101.1023 of this title (relating to English Language Learners at the Exit Level).

*Source: The provisions of this §101.1025 adopted to be effective December 22, 2011, 36 TexReg 8521.*