

## Chapter 89. Adaptations for Special Populations

### Subchapter BB. Commissioner's Rules Concerning State Plan for Educating English Language Learners

*Statutory Authority: The provisions of this Subchapter BB issued under the Texas Education Code, §§29.051, 29.053, 29.054, 29.056, 29.0561, 29.060, and 29.066, unless otherwise noted.*

#### §89.1201. Policy.

- (a) It is the policy of the state that every student in the state who has a home language other than English and who is identified as an English language learner shall be provided a full opportunity to participate in a bilingual education or English as a second language (ESL) program, as required in the Texas Education Code (TEC), Chapter 29, Subchapter B. To ensure equal educational opportunity, as required in the TEC, §1.002(a), each school district shall:
- (1) identify English language learners based on criteria established by the state;
  - (2) provide bilingual education and ESL programs, as integral parts of the regular program as described in the TEC, §4.002;
  - (3) seek certified teaching personnel to ensure that English language learners are afforded full opportunity to master the essential knowledge and skills required by the state; and
  - (4) assess achievement for essential knowledge and skills in accordance with the TEC, Chapter 39, to ensure accountability for English language learners and the schools that serve them.
- (b) The goal of bilingual education programs shall be to enable English language learners to become competent in listening, speaking, reading, and writing in the English language through the development of literacy and academic skills in the primary language and English. Such programs shall emphasize the mastery of English language skills, as well as mathematics, science, and social studies, as integral parts of the academic goals for all students to enable English language learners to participate equitably in school.
- (c) The goal of ESL programs shall be to enable English language learners to become competent in listening, speaking, reading, and writing in the English language through the integrated use of second language methods. The ESL program shall emphasize the mastery of English language skills, as well as mathematics, science, and social studies, as integral parts of the academic goals for all students to enable English language learners to participate equitably in school.
- (d) Bilingual education and ESL programs shall be integral parts of the total school program. Such programs shall use instructional approaches designed to meet the special needs of English language learners. The basic curriculum content of the programs shall be based on the essential knowledge and skills required by the state.

*Source: The provisions of this §89.1201 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective May 28, 2012, 37 TexReg 3822.*

#### §89.1203. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) English language learner--A person who is in the process of acquiring English and has another language as the first native language. The terms English language learner and limited English proficient student are used interchangeably.
- (2) Dual language immersion--An educational approach in which students learn two languages in an instructional setting that integrates subject content presented in English and another language. Models vary depending on the amount of each language used for instruction at each grade level.

The program must be based on instruction that adds to the student's first language. The implementation of a dual language immersion program model is optional.

- (3) School district--For the purposes of this subchapter, the definition of a school district includes an open-enrollment charter school.

*Source: The provisions of this §89.1203 adopted to be effective May 28, 2012, 37 TexReg 3822.*

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

- (a) Each school district that has an enrollment of 20 or more English language learners 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 English language learners 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 school district shall provide a bilingual education program by offering dual language instruction in prekindergarten through the elementary grades, using one of the four bilingual program models described in §89.1210 of this title (relating to Program Content and Design).
- (c) School 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 English language learners for whom a school 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 school district shall provide English as a second language instruction by offering an English as a second language program using one of the two models described in §89.1210 of this title.
- (f) School districts may join with other school districts to provide bilingual education or English as a second language programs.

*Source: The provisions of this §89.1205 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective March 5, 1999, 24 TexReg 1383; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective September 17, 2007, 32 TexReg 6311; amended to be effective May 28, 2012, 37 TexReg 3822.*

#### **§89.1207. Exceptions and Waivers.**

- (a) Bilingual education program.
- (1) Exceptions. A school 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 November 1 and shall include:
- (A) a statement of the reasons the school 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 English language learners, 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 acknowledgement that certified teachers available in the school 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 English language learners with beginning levels of English proficiency are served on a priority basis;

- (D) a description of the training program the school 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 school 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 if the requesting school district:
- (A) meets or exceeds the state average for English language learner 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 school district denied a bilingual education program exception must submit to the commissioner a detailed action plan for complying with required regulations for the following school year.
- (4) Appeals. A school 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 Texas Education Code (TEC), §39.057, if a school 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 English language learner 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, §39.102.
- (b) English as a second language program.
- (1) Waivers. A school 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 a waiver of the certification requirements for each teacher who will provide instruction in English as a second language for English language learners. 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 November 1 and shall include:
    - (A) a statement of the reasons the school 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 English language learners, 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 school district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels in the elementary school campus and, if needed, secondary campuses, to ensure that the linguistic and academic needs of the English language learners 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 for each teacher under a waiver, the estimated date for the completion of the English as a second language supplemental certification, which must be completed by the end of the school year for which the waiver was requested;
  - (E) a description of the training program that the school 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 school 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 if the requesting school district:
- (A) meets or exceeds the state average for English language learner performance on the required state assessments; or
  - (B) meets the requirements and measurable targets of the action plan described in paragraph (1)(F) of this subsection submitted the previous year and approved by the TEA.
- (3) Denial of waivers. A school district denied an English as a second language program waiver must submit to the commissioner a detailed action plan for complying with required regulations for the following school year.
- (4) Appeals. A school 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, §39.057, if a school 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 English language learner 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, §39.102.

*Source: The provisions of this §89.1207 adopted to be effective September 17, 2007, 32 TexReg 6311; amended to be effective May 28, 2012, 37 TexReg 3822.*

**§89.1210. Program Content and Design.**

- (a) Each school district required to offer a bilingual education or English as a second language program shall provide each English language learner the opportunity to be enrolled in the required program at his or her grade level. Each student's level of proficiency shall be designated by the language proficiency assessment committee in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee). The school district shall modify the instruction, pacing, and materials to ensure that English language learners have a full opportunity to master the essential knowledge and skills of the required curriculum. Students participating in the bilingual education program may demonstrate their mastery of the essential knowledge and skills in either their home language or in English for each content area.
- (b) The bilingual education program shall be a full-time program of instruction in which both the students' home language and English shall be used for instruction. The amount of instruction in each language within the bilingual education program shall be commensurate with the students' level of proficiency in each language and their level of academic achievement. The students' level of language proficiency and academic achievement shall be designated by the language proficiency assessment committee. The Texas Education Agency (TEA) shall develop program guidelines to ensure that the programs are developmentally appropriate, that the instruction in each language is appropriate, and that the students are challenged to perform at a level commensurate with their linguistic proficiency and academic potential.
- (c) The bilingual education program shall be an integral part of the regular educational program required under Chapter 74 of this title (relating to Curriculum Requirements). In bilingual education programs using Spanish and English as languages of instruction, school districts shall use state-adopted English and Spanish instructional materials and supplementary materials as curriculum tools to enhance the learning process; in addition, school districts may use other curriculum adaptations that have been developed. The bilingual education program shall address the affective, linguistic, and cognitive needs of English language learners as follows.
  - (1) Affective. English language learners shall be provided instruction in their home language to introduce basic concepts of the school environment, and instruction both in their home language and in English, which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall address the history and cultural heritage associated with both the students' home language and the United States.
  - (2) Linguistic. English language learners shall be provided instruction in the skills of listening, speaking, reading, and writing both in their home language and in English. The instruction in both languages shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills in all subjects.
  - (3) Cognitive. English language learners shall be provided instruction in language arts, mathematics, science, and social studies both in their home language and in English. The content area instruction in both languages shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills in all subjects.
- (d) The bilingual education program shall be implemented with consideration for each English language learner's unique readiness level through one of the following program models.
  - (1) Transitional bilingual/early exit is a bilingual program model that serves a student identified as limited English proficient in both English and Spanish, or another language, and transfers the student to English-only instruction. This model provides instruction in literacy and academic content areas through the medium of the student's first language, along with instruction in English oral and academic language development. Non-academic subjects such as art, music, and physical education may also be taught in English. Exiting of a student to an all-English program of instruction will occur no earlier than the end of Grade 1 or, if the student enrolls in school during or after Grade 1, no earlier than two years or later than five years after the student enrolls in school. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title (relating to Testing and Classification of Students) may continue receiving services, but the school district will not receive the bilingual education allotment for that student.

- (2) Transitional bilingual/late exit is a bilingual program model that serves a student identified as limited English proficient in both English and Spanish, or another language, and transfers the student to English-only instruction. Academic growth is accelerated through cognitively challenging academic work in the student's first language along with meaningful academic content taught through the student's second language, English. The goal is to promote high levels of academic achievement and full academic language proficiency in the student's first language and English. A student enrolled in a transitional bilingual/late exit program is eligible to exit the program no earlier than six years or later than seven years after the student enrolls in school. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student.
- (3) Dual language immersion/two-way is a biliteracy program model that integrates students proficient in English and students identified as limited English proficient. This model provides instruction in both English and Spanish, or another language, and transfers a student identified as limited English proficient to English-only instruction. Instruction is provided to both native English speakers and native speakers of another language in an instructional setting where language learning is integrated with content instruction. Academic subjects are taught to all students through both English and the other language. Program exit will occur no earlier than six years or later than seven years after the student enrolls in school. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student. The primary goals of a dual language immersion program model are:
  - (A) the development of fluency and literacy in English and another language for all students, with special attention given to English language learners participating in the program;
  - (B) the integration of English speakers and English language learners for academic instruction, in accordance with the program design and model selected by the school district board of trustees. Whenever possible, 50% of the students in a program should be dominant English speakers and 50% of the students should be native speakers of the other language at the beginning of the program; and
  - (C) the promotion of bilingualism, biliteracy, cross-cultural awareness, and high academic achievement.
- (4) Dual language immersion/one-way is a biliteracy program model that serves only students identified as limited English proficient. This model provides instruction in both English and Spanish, or another language, and transfers a student to English-only instruction. Instruction is provided to English language learners in an instructional setting where language learning is integrated with content instruction. Academic subjects are taught to all students through both English and the other language. Program exit will occur no earlier than six years or later than seven years after the student enrolls in school. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student. The primary goals of a dual language immersion program model are:
  - (A) the development of fluency and literacy in English and another language for all students, with special attention given to English language learners participating in the program;
  - (B) the integration of English speakers and English language learners for academic instruction, in accordance with the program design and model selected by the school district board of trustees; and
  - (C) the promotion of bilingualism, biliteracy, cross-cultural awareness, and high academic achievement.
- (e) English as a second language programs shall be intensive programs of instruction designed to develop proficiency in listening, speaking, reading, and writing in the English language. Instruction in English as a

second language shall be commensurate with the student's level of English proficiency and his or her level of academic achievement. In prekindergarten through Grade 8, instruction in English as a second language may vary from the amount of time accorded to instruction in English language arts in the general education program for English proficient students to a full-time instructional setting using second language methods. In high school, the English as a second language program shall be consistent with graduation requirements under Chapter 74 of this title. The language proficiency assessment committee may recommend appropriate services that may include content courses provided through sheltered instructional approaches by trained teachers, enrollment in English as a second language courses, additional state elective English courses, and special assistance provided through locally determined programs.

- (f) The English as a second language program shall be an integral part of the regular educational program required under Chapter 74 of this title. School districts shall use state-adopted English as a second language instructional materials and supplementary materials as curriculum tools. In addition, school districts may use other curriculum adaptations that have been developed. The school district shall provide for ongoing coordination between the English as a second language program and the regular educational program. The English as a second language program shall address the affective, linguistic, and cognitive needs of English language learners as follows.
- (1) Affective. English language learners shall be provided instruction using second language methods in English to introduce basic concepts of the school environment, which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall address the history and cultural heritage associated with both the students' home language and the United States.
  - (2) Linguistic. English language learners shall be provided intensive instruction to develop proficiency in listening, speaking, reading, and writing in the English language. The instruction in academic content areas shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills.
  - (3) Cognitive. English language learners shall be provided instruction in English in language arts, mathematics, science, and social studies using second language methods. The instruction in academic content areas shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills.
- (g) The English as a second language program shall be implemented with consideration for each English language learner's unique readiness level through one of the following program models.
- (1) An English as a second language/content-based program model is an English program that serves only students identified as English language learners by providing a full-time teacher certified under the Texas Education Code (TEC), §29.061(c), to provide supplementary instruction for all content area instruction. The program integrates English as a second language instruction with subject matter instruction that focuses not only on learning a second language, but using that language as a medium to learn mathematics, science, social studies, or other academic subjects. Exiting of a student to an all-English program of instruction without English as a second language support will occur no earlier than the end of Grade 1 or, if the student enrolls in school during or after Grade 1, no earlier than two years or later than five years after the student enrolls in school. At the high school level, the English language learner receives sheltered instruction in all content areas. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student.
  - (2) An English as a second language/pull-out program model is an English program that serves only students identified as English language learners by providing a part-time teacher certified under the TEC, §29.061(c), to provide English language arts instruction exclusively, while the student remains in a mainstream instructional arrangement in the remaining content areas. Instruction may be provided by the English as a second language teacher in a pull-out or inclusionary delivery model. Exiting of a student to an all-English program of instruction without English as a second language support will occur no earlier than the end of Grade 1 or, if the student enrolls in school

during or after Grade 1, no earlier than two years or later than five years after the student enrolls in school. At the high school level, the English language learner receives sheltered instruction in all content areas. A student who has met exit criteria in accordance with §89.1225(h), (j), and (k) of this title may continue receiving services, but the school district will not receive the bilingual education allotment for that student.

- (h) Except in the courses specified in subsection (i) of this section, English as a second language strategies, which may involve the use of the students' home language, may be provided in any of the courses or electives required for promotion or graduation to assist the English language learners to master the essential knowledge and skills for the required subject(s). The use of English as a second language strategies shall not impede the awarding of credit toward meeting promotion or graduation requirements.
- (i) In subjects such as art, music, and physical education, the English language learners shall participate with their English-speaking peers in regular classes provided in the subjects. The school district shall ensure that students enrolled in bilingual education and English as a second language programs have a meaningful opportunity to participate with other students in all extracurricular activities.
- (j) The required bilingual education or English as a second language programs shall be provided to every English language learner with parental approval until such time that the student meets exit criteria as described in §89.1225(h) of this title or graduates from high school.

*Source: The provisions of this §89.1210 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective March 5, 1999, 24 TexReg 1383; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective May 28, 2012, 37 TexReg 3822.*

#### **§89.1215. Home Language Survey.**

- (a) School districts shall conduct only one home language survey of each student. The home language survey shall be administered to each student new to the school district and to students previously enrolled who were not surveyed in the past. School districts shall require that the survey be signed by the student's parent or guardian for each student in prekindergarten through Grade 8, or by the student in Grades 9-12. The original copy of the survey shall be kept in the student's permanent record.
- (b) The home language survey shall be administered in English and Spanish; for students of other language groups, the home language survey shall be translated into the home language whenever possible. The home language survey shall contain the following questions.
  - (1) "What language is spoken in your home most of the time?"
  - (2) "What language does your child speak most of the time?"
- (c) Additional information may be collected by the school district and recorded on the home language survey.
- (d) The home language survey shall be used to establish the student's language classification for determining whether the school district is required to provide a bilingual education or English as a second language program. If the response on the home language survey indicates that a language other than English is used, the student shall be tested in accordance with §89.1225 of this title (relating to Testing and Classification of Students).

*Source: The provisions of this §89.1215 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective May 28, 2012, 37 TexReg 3822.*

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

- (a) School districts shall by local board policy establish and operate a language proficiency assessment committee. The school 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 school 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 (TEC), §29.063. If the school district does not have an individual in one or more of the school job classifications required, the



school district shall designate another professional staff member to serve on the language proficiency assessment committee. The school district may add other members to the committee in any of the required categories.

- (c) In school 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, a campus administrator, and a parent of an English language learner participating in the program designated by the school district.
- (d) No parent serving on the language proficiency assessment committee shall be an employee of the school district.
- (e) A school district shall establish and operate a sufficient number of language proficiency assessment committees to enable them to discharge their duties within 20 school days of the enrollment of English language learners.
- (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 school 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 English language learners 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 English language learner in accordance with the guidelines issued pursuant to §89.1210(b) and (e) of this title (relating to Program Content and Design);
  - (2) designate the level of academic achievement of each English language learner;
  - (3) designate, subject to parental approval, the initial instructional placement of each English language learner in the required program;
  - (4) facilitate the participation of English language learners in other special programs for which they are eligible provided by the school 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, 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 English language learner as outlined in Chapter 101, Subchapter AA, of this title (relating to Commissioner's Rules Concerning the Participation of English Language Learners in State Assessments).
- (i) The language proficiency assessment committee shall give written notice to the student's parent advising that the student has been classified as an English language learner 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.
- (j) Pending parent approval of an English language learner's entry into the bilingual education or English as a second language program recommended by the language proficiency assessment committee, the school district shall place the student in the recommended program, but may count only English language learners with parental approval for the bilingual education allotment.
- (k) 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 during the first two years after exiting in accordance with the TEC, §29.0561.

- (l) The student's permanent record shall contain documentation of all actions impacting the English language learner.
  - (1) Documentation shall include:
    - (A) the identification of the student as an English language learner;
    - (B) the designation of the student's level of language proficiency;
    - (C) the recommendation of program placement;
    - (D) parental approval of entry or placement into the program;
    - (E) the dates of entry into, and placement within, the program;
    - (F) assessment information as outlined in Chapter 101, Subchapter AA, of this title;
    - (G) additional instructional interventions provided to students to ensure adequate yearly progress;
    - (H) the date of exit from the program and parental approval; and
    - (I) the results of monitoring for academic success, including students formerly classified as English language learners, as required under the TEC, §29.063(c)(4).
  - (2) Current documentation as described in paragraph (1) of this subsection shall be forwarded in the same manner as other student records to another school district in which the student enrolls.
- (m) A school district may identify, exit, or place a student in a program without written approval of the student's parent or guardian if:
  - (1) the student is 18 years of age or has had the disabilities of minority removed;
  - (2) reasonable attempts to inform and obtain permission from a parent or guardian have been made and documented;
  - (3) approval is obtained from:
    - (A) an adult who the school district recognizes as standing in parental relation to the student, including a foster parent or employee of a state or local governmental agency with temporary possession or control of the student; or
    - (B) the student, if no parent, guardian, or other responsible adult is available; or
  - (4) a parent or guardian has not objected in writing to the proposed entry, exit, or placement.

*Source: The provisions of this §89.1220 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective March 5, 1999, 24 TexReg 1383; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective September 17, 2007, 32 TexReg 6311; amended to be effective May 28, 2012, 37 TexReg 3822.*

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

- (a) For identifying English language learners, school 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 assessment, or another test approved by the TEA, unless the norm-referenced standardized achievement instrument is not valid in accordance with subsection (f)(2)(C) of this section.
- (b) School districts that provide a bilingual education program shall administer an oral language proficiency test in the home language of the student who is eligible to be served in the bilingual education program. If the home language of the student is Spanish, the school district shall administer the Spanish version of the

- TEA-approved oral language proficiency test that was administered in English. If the home language of the student is other than Spanish, the school district shall determine the student's 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 that shall identify a student as an English language learner shall be established by the 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 in prekindergarten through Grade 12 and norm-referenced standardized achievement instrument in Grades 2-12 within 20 school days of their enrollment.
  - (f) For entry into a bilingual education or English as a second language program, a student shall be identified as an English language learner using the following criteria.
    - (1) In prekindergarten through Grade 1, 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.
    - (2) In 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 English reading and/or English language arts sections of the TEA-approved norm-referenced standardized achievement instrument 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 standardized achievement instrument or other test approved by the 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 20 school days of their initial enrollment in the school district, students shall be identified as English language learners 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 English language learners and enrolled in the required bilingual education or English as a second language program within 20 school days 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 general education, 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 (TEC), §39.023(a), or a TEA-approved 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 standardized achievement instrument for a student who is enrolled in Grade 1 or 2; and
  - (3) TEA-approved criterion-referenced written tests when available, or other TEA-approved tests when criterion-referenced tests are not available, and the results of a subjective teacher evaluation.
- (i) A student may not be exited from the bilingual education or English as a second language program in prekindergarten or kindergarten. A school district must ensure that English language learners are prepared to meet academic standards required by the 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 on the criterion-referenced assessment instrument required in the TEC, §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.
  - (l) Notwithstanding §101.101 of this title (relating to Group-Administered Tests), all tests used for the purpose of identification, exit, and placement of students and approved by the TEA must be re-normed at least every eight years.

*Source: The provisions of this §89.1225 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective September 17, 2007, 32 TexReg 6311; amended to be effective May 28, 2012, 37 TexReg 3822.*

**§89.1227. Minimum Requirements for Dual Language Immersion Program Model.**

- (a) A dual language immersion program model must address all curriculum requirements specified in Chapter 74, Subchapter A, of this title (relating to Required Curriculum) to include foundation and enrichment areas, English language proficiency standards, and college and career readiness standards.
- (b) A dual language immersion program model shall be a full-time program of academic instruction in English and another language.
- (c) A minimum of 50% of instructional time must be provided in the language other than English.
- (d) Implementation should:
  - (1) begin at prekindergarten, kindergarten, or Grade 1, as applicable;
  - (2) continue without interruption incrementally through the elementary grades whenever possible; and
  - (3) consider expansion to middle school and high school whenever possible.
- (e) A dual language immersion program model shall be developmentally appropriate and based on current best practices research.

*Source: The provisions of this §89.1227 adopted to be effective May 28, 2012, 37 TexReg 3822.*

**§89.1228. Dual Language Immersion Program Model Implementation.**

- (a) Student enrollment in a dual language immersion program model is optional.
- (b) A dual language immersion program model must fully disclose candidate selection criteria and ensure that access to the program is not based on race, creed, color, religious affiliation, age, or disability.
- (c) A school district must obtain written parental approval for student participation in the program sequence and model established by the school district.
- (d) A school district implementing a dual language immersion program model must develop a policy on enrollment and continuation for students in this program model. The policy must address:
  - (1) eligibility criteria;
  - (2) program purpose;
  - (3) grade levels in which the program will be implemented;
  - (4) support of program goals as stated in §89.1210 of this title (relating to Program Content and Design); and
  - (5) expectations for students and parents.

*Source: The provisions of this §89.1228 adopted to be effective May 28, 2012, 37 TexReg 3822.*

**§89.1230. Eligible Students with Disabilities.**

- (a) School districts shall implement assessment procedures that differentiate between language proficiency and handicapping conditions in accordance with Subchapter AA of this chapter (relating to Commissioner's Rules Concerning Special Education Services) and shall establish placement procedures that ensure that placement in a bilingual education or English as a second language program is not refused solely because the student has a disability.
- (b) Admission, review, and dismissal committee members shall meet in conjunction with language proficiency assessment committee members to review the educational needs of each English language learner who qualifies for services in the special education program.

*Source: The provisions of this §89.1230 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective March 5, 1999, 24 TexReg 1383; amended to be effective May 28, 2012, 37 TexReg 3822.*

**§89.1233. Participation of English Proficient Students.**

School districts may enroll students who are not English language learners in the bilingual education program in accordance with the Texas Education Code, §29.058.

*Source: The provisions of this §89.1233 adopted to be effective March 5, 1999, 24 TexReg 1383 amended to be effective May 28, 2012, 37 TexReg 3822.*

**§89.1235. Facilities.**

Bilingual education and English as a second language programs shall be located in the regular public schools of the school district rather than in separate facilities. In order to provide the required bilingual education or English as a second language programs, school districts may concentrate the programs at a limited number of facilities within the school district provided that the enrollment in those facilities shall not exceed 60% English language learners. Recent immigrant English language learners enrolled in newcomer centers shall return to home campuses no later than two years after initial enrollment in a newcomer program.

*Source: The provisions of this §89.1235 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective May 28, 2012, 37 TexReg 3822.*

**§89.1240. Parental Authority and Responsibility.**

- (a) The parents shall be notified that their child has been classified as an English language learner and recommended for placement in the required bilingual education or English as a second language program. They shall be provided information describing the bilingual education or English as a second language program recommended, its benefits to the student, and its being an integral part of the school program to ensure that the parents understand the purposes and content of the program. The entry or placement of a student in the bilingual education or English as a second language program must be approved in writing by the student's parent. The parent's approval shall be considered valid for the student's continued participation in the required bilingual education or English as a second language program until the student meets the exit criteria described in §89.1225(h) of this title (relating to Testing and Classification of Students), graduates from high school, or the parent requests a change in program placement.
- (b) The school district shall notify the student's parent of the student's reclassification as English proficient and his or her exit from the bilingual education or English as a second language program and acquire approval as required under the Texas Education Code, §29.056(a). Students meeting exit requirements may continue in the bilingual education or English as a second language program with parental approval but are not eligible for inclusion in the school district bilingual education allotment.
- (c) The parent of a student enrolled in a school district that is required to offer bilingual education or English as a second language programs may appeal to the commissioner of education if the school district fails to comply with the law or the rules. Appeals shall be filed in accordance with Chapter 157 of this title (relating to Hearings and Appeals).

*Source: The provisions of this §89.1240 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective May 28, 2012, 37 TexReg 3822.*

**§89.1245. Staffing and Staff Development.**

- (a) School districts shall take all reasonable affirmative steps to assign appropriately certified teachers to the required bilingual education and English as a second language programs in accordance with the Texas Education Code (TEC), §29.061, concerning bilingual education and special language program teachers. School districts that are unable to secure a sufficient number of certified bilingual education and English as a second language teachers to provide the required programs, shall request emergency teaching permits or special assignment permits, as appropriate, in accordance with Chapter 230 of this title (relating to Professional Educator Preparation and Certification).
- (b) School districts that are unable to employ a sufficient number of teachers, including part-time teachers, who meet the requirements of subsection (a) of this section for the bilingual education and English as a second language programs shall apply on or before November 1 for an exception to the bilingual education program as provided in §89.1207(a) of this title (relating to Exceptions and Waivers) or a waiver of the certification requirements in the English as a second language program as provided in §89.1207(b) of this title as needed.
- (c) Teachers assigned to the bilingual education program and/or English as a second language program may receive salary supplements as authorized by the TEC, §42.153.
- (d) School districts may compensate teachers and aides assigned to bilingual education and English as a second language programs for participation in continuing education programs designed to increase their skills or lead to bilingual education or English as a second language certification.
- (e) School districts that are unable to staff their bilingual education and English as a second language programs with fully certified teachers shall use at least 10% of their bilingual education allotment for preservice and inservice training to improve the skills of the teachers who provide instruction in the alternative bilingual education program, instruction in English as a second language, and/or content area instruction in special classes for English language learners.
- (f) The commissioner of education shall encourage school districts to cooperate with colleges and universities to provide training for teachers assigned to the bilingual education and/or English as a second language programs.

- (g) The Texas Education Agency (TEA) shall develop, in collaboration with education service centers (ESCs), bilingual education training guides for implementing bilingual education and English as a second language training programs. The materials shall provide a framework for:
- (1) developmentally appropriate bilingual education programs for early childhood through the elementary grades;
  - (2) affectively appropriate instruction in bilingual education and English as a second language programs in accordance with §89.1210(c)(1) and (f)(1) of this title (relating to Program Content and Design);
  - (3) linguistically appropriate bilingual education and English as a second language programs in accordance with §89.1210(c)(2) and (f)(2) of this title;
  - (4) cognitively appropriate programs for English language learners in accordance with §89.1210(c)(3) and (f)(3) of this title; and
  - (5) developmentally appropriate programs for English language learners identified as gifted and talented and English language learners with disabilities.

*Source: The provisions of this §89.1245 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective March 5, 1999, 24 TexReg 1383; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective May 28, 2012, 37 TexReg 3822.*

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

Summer school programs that are provided under the Texas Education Code (TEC), §29.060, for English language learners who will be eligible for admission to kindergarten or Grade 1 at the beginning of the next school year shall be implemented in accordance with this section.

- (1) Purpose of summer school programs.
  - (A) English language learners shall have an opportunity to receive special instruction designed to prepare them to be successful in kindergarten and Grade 1.
  - (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 English language learners in accordance with §89.1210(c) and (f) of this title (relating to Program Content and Design).
- (2) Establishment of, and eligibility for, the program.
  - (A) Each school district required to offer a bilingual or English as a second language (ESL) program in accordance with the TEC, §29.053, shall offer the summer program.
  - (B) To be eligible for enrollment:
    - (i) a student must be eligible for admission to kindergarten or to Grade 1 at the beginning of the next school year and must be an English language learner; and
    - (ii) a parent or guardian must have approved placement of the English language learner in the required bilingual or ESL program following the procedures described in §89.1220(g) of this title (relating to Language Proficiency Assessment Committee) and §89.1225(a)-(f) of this title (relating to Testing and Classification of Students).
  - (C) Limited English proficiency shall be determined by evaluating students using an oral language proficiency test approved by the Texas Education Agency.
- (3) Operation of the program.
  - (A) Enrollment is optional.

- (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 school district is not required to provide transportation for the summer program.
  - (E) Teachers shall possess certification or endorsement as required in the TEC, §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 school district may join with other school 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 TEC, §29.153.
- (4) Funding and records for programs.
- (A) A school district shall use state and local funds for program purposes. School 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 TEC, §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. The allotment per unit shall be determined by the commissioner based on funds available.
    - (iii) Any school 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 school districts must demonstrate that they have aggressively attempted to encourage student participation.
    - (iv) Payment to school 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 in order for a school district to be eligible for funding.
  - (B) A school district shall maintain records of eligibility, attendance, and progress of students.

*Source: The provisions of this §89.1250 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective February 17, 2005, 30 TexReg 709; amended to be effective September 17, 2007, 32 TexReg 6311; amended to be effective May 28, 2012, 37 TexReg 3822.*

#### **§89.1265. Evaluation.**

- (a) All school districts required to conduct a bilingual education or English as a second language program shall conduct periodic assessment in the languages of instruction to determine program impact and student outcomes in all subject areas.
- (b) Annual reports of educational performance shall reflect the academic progress in either language of the English language learners, the extent to which they are becoming proficient in English, the number of



students who have been exited from the bilingual education and English as a second language programs, and the number of teachers and aides trained and the frequency, scope, and results of the training. These reports shall be retained at the district level.

- (c) School districts shall report to parents the progress of their child as a result of participation in the program offered to English language learners in English and the home language at least annually.
- (d) Each school year, the principal of each school campus, with the assistance of the campus level committee, shall develop, review, and revise the campus improvement plan described in the Texas Education Code, §11.253, for the purpose of improving student performance for English language learners.

*Source: The provisions of this §89.1265 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective April 18, 2002, 27 TexReg 3107; amended to be effective May 28, 2012, 37 TexReg 3822.*

#### **§89.1267. Standards for Evaluation of Dual Language Immersion Program Models.**

- (a) A school district implementing a dual language immersion program must conduct annual formative and summative evaluations collecting a full range of data to determine program impact on student academic success.
- (b) The success of a dual language immersion program is evident by students in the program demonstrating high levels of language proficiency in English and the other language and mastery of the Texas essential knowledge and skills for the foundation and enrichment areas. Indicators of success may include scores on statewide student assessments in English, statewide student assessments in Spanish (if appropriate), norm-referenced standardized achievement tests in both languages, and/or language proficiency tests in both languages.

*Source: The provisions of this §89.1267 adopted to be effective May 28, 2012, 37 TexReg 3822.*

#### **§89.1269. General Standards for Recognition of Dual Language Immersion Program Models.**

- (a) School district recognition. An exceptional dual language immersion program model may be recognized by the local school district board of trustees using the following criteria.
  - (1) A school district must exceed the minimum requirements stated in §89.1227 of this title (relating to Minimum Requirements for Dual Language Immersion Program Model).
  - (2) A school district must not receive the lowest performance rating in the state accountability system.
  - (3) A school district must not be identified for any stage of intervention for the district's bilingual and/or English as a second language program under the performance-based monitoring system.
  - (4) A school district must meet the adequate yearly progress participation and performance criteria in reading and mathematics for the English language learner student group under Elementary and Secondary Education Act (ESEA) regulations.
- (b) Student recognition. A student participating in a dual language immersion program model may be recognized by the program and its local school district board of trustees using the following criteria.
  - (1) The student must meet or exceed statewide student assessment passing standards, as required by the Texas Education Code, §39.024, in all subject areas at the appropriate grade level.
  - (2) The student must meet or exceed expected levels of language proficiency on a recognized language proficiency test from the list of tests approved by the commissioner of education.

*Source: The provisions of this §89.1269 adopted to be effective May 28, 2012, 37 TexReg 3822.*