

Chapter 89. Adaptations for Special Populations

Subchapter BB. Commissioner's Rules Concerning State Plan for Educating Emergent Bilingual Students

§89.1201. Policy.

- (a) It is the policy of the state that every student in the state who has a primary language other than English and who is identified as an emergent bilingual student shall be provided a full opportunity to participate in a bilingual education or English as a second language (ESL) program, as required in Texas Education Code (TEC), Chapter 29, Subchapter B. To ensure equal educational opportunity, as required in TEC, §1.002(a), each school district shall:
- (1) identify emergent bilingual students based on criteria established by the state;
 - (2) provide bilingual education and ESL programs, as integral parts of the general program as described in TEC, §4.002;
 - (3) seek appropriately certified teaching personnel to ensure that emergent bilingual students are afforded full opportunity to master the essential knowledge and skills required by the state; and
 - (4) assess for academic achievement and linguistic progress in accordance with TEC, Chapter 29, to ensure accountability for emergent bilingual students and the schools that serve them.
- (b) The goal of bilingual education programs shall be to enable emergent bilingual students to develop primary language literacy and academic skills through the integrated use of content-based language and instructional methods to become proficient in listening, speaking, reading, and writing in the English language. Such programs shall include the mastery of grade level reading and language arts, mathematics, science, and social studies knowledge and skills as integral parts of the academic goals for all students to enable emergent bilingual students to participate equitably in school.
- (c) The goal of ESL programs shall be to enable emergent bilingual students to become proficient in listening, speaking, reading, and writing in the English language through the integrated use of content-based language instructional methods. The ESL program shall include the mastery of grade level English reading and language arts, mathematics, science, and social studies knowledge and skills as integral parts of the academic goals for all students to enable emergent bilingual students 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 specific language needs of emergent bilingual students. The basic curriculum content of the programs shall be based on the Texas Essential Knowledge and Skills and the English language proficiency standards required by the state.

Statutory Authority: The provisions of this §89.1201 issued under the Texas Education Code, §§29.051-29.056, 29.0561, 29.057-29.064, and 29.066.

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§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) **Alternative language program**--A temporary instructional plan that meets the affective, linguistic, and cognitive needs of emergent bilingual students and equips the teacher under a bilingual education exception or English as a second language (ESL) waiver described in §89.1207 of this title (relating to Bilingual Education Exceptions and English as a Second Language Waivers) to align closely to the required bilingual or ESL program through the comprehensive professional development plan.

- (2) Bilingual education allotment--An adjusted basic funding allotment provided for each school district based on student average daily attendance in a bilingual education or an ESL program in accordance with Texas Education Code (TEC), §48.105.
- (3) Certified bilingual education teacher--A teacher appropriately certified in bilingual education as well as for the grade level and content area.
- (4) Certified English as a second language teacher-- A teacher appropriately certified in ESL as well as for the grade level and content area. The term "certified English as a second language teacher" as used in this subchapter is synonymous with the term "professional transitional language educator" used in TEC, §29.063.
- (5) Content-based language instruction--An integrated approach to language instruction in which language is developed within the context of content delivery that is linguistically sustaining and is used across all programs for emergent bilingual students.
- (6) Dual language immersion (DLI) program --A state-approved bilingual program model in accordance with TEC, §29.066.
- (7) Dual-language instruction--An educational approach that focuses on the use of English and the student's primary language for instructional purposes.
- (8) Emergent bilingual--A student identified by the language proficiency assessment committee (LPAC) who is in the process of acquiring English and has another language as the student's primary or home language. This term is interchangeable with English learner as used in federal regulations and replaces the term "limited English proficient student" formerly used in TEC, Chapter 29, Subchapter B.
- (9) English as a second language program--A special language program in accordance with TEC, Chapter 29, Subchapter B. Another related term for an ESL program is "English as an additional language program."
- (10) English language proficiency standards (ELPS)--Standards to be published along with the Texas Essential Knowledge and Skills for each subject in the required curriculum outlined in Chapter 74 of this title (relating to Curriculum Requirements), including foundation and enrichment areas, ELPS, and college and career readiness standards.
- (11) English proficient student--A former emergent bilingual student who has met reclassification as English proficient by the LPAC.
- (12) Exit--The point when a student is no longer classified as an emergent bilingual student (i.e., the student is reclassified) and the student ends bilingual or ESL program participation with parental approval and based on the recommendation of the LPAC. The term "exit" as used in this subchapter is synonymous with the description in TEC, Chapter 29, of "transferring out" of bilingual or special language programming. For the purpose of meeting the goals of a DLI program, the LPAC may recommend continued program participation beyond reclassification.
- (13) Language allocation plan--A strategically developed and clearly communicated plan for a DLI program model that defines the percentage of language of instruction for each content area and grade level.
- (14) Language proficiency assessment committee--A designated group of committee members as described in §89.1220 of this title (relating to Language Proficiency Assessment Committee) that ensures the appropriate identification, placement, assessment, services, reclassification, and monitoring of emergent bilingual students. The LPAC also meets in conjunction with all other committees related to programs and services for which an emergent bilingual student qualifies.
- (15) Non-emergent bilingual student--A student who has not been classified as an emergent bilingual student by the LPAC.
- (16) Paired teaching--A teaching partnership permissible in a DLI program model when half the content area instruction is in the partner language and half is in English (50/50 language allocation). One teacher provides content area instruction in the partner language while the second

teacher provides content area instruction delivered in English. The teacher instructing in the partner language must hold bilingual education certification while the teacher instructing in English may hold either bilingual education or ESL certification.

- (17) Parent--The parent or legal guardian of the student in accordance with TEC, §29.052(2).
- (18) Partner language--The designated language of instruction other than English within a DLI program. The partner language may or may not be the primary language of a DLI program student.
- (19) Prekindergarten--Students enrolled in a 3- or 4-year-old prekindergarten program as well as 3- or 4-year-old students enrolled in an early education setting.
- (20) Primary language--The language an emergent bilingual student is exposed to prior to entering school and uses mainly to communicate at home and school, also known as mother tongue, first language, native language, home language, or heritage language.
- (21) Reclassification--The process by which the LPAC determines that an emergent bilingual student has met the appropriate criteria to be classified as English proficient, and the student enters year 1 of monitoring as indicated in the Texas Student Data System Public Education Information Management System.
- (22) School district-- A local education agency, an open-enrollment charter school, or a district of innovation.

Statutory Authority: The provisions of this §89.1203 issued under the Texas Education Code, §§29.051-29.056, 29.0561, 29.057-29.064, and 29.066.

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

- (a) Each school district that has an enrollment of 20 or more students identified as emergent bilingual 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 emergent bilingual students in prekindergarten through the elementary grades with that language classification. "Elementary grades" shall include at least prekindergarten through Grade 5; sixth grade shall be included when clustered with elementary grades.
- (b) A school district required to provide a bilingual education program as described in subsection (a) of this section shall offer dual-language instruction (English and primary language) 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) All emergent bilingual students for whom a school district is not required to offer a bilingual education program shall be provided an English as a second language (ESL) program as described in subsection (d) of this section, regardless of the students' grade levels and primary language, and regardless of the number of such students, except in cases where a district exercises the option described in subsection (g) of this section.
- (d) A school district required to provide an ESL program as described in subsection (c) of this section shall provide an ESL program using one of the two models described in §89.1210 of this title.
- (e) School districts may join with other school districts to provide bilingual education or ESL programs.
- (f) In addition to the required bilingual and/or ESL programs, school districts are authorized to establish a bilingual education program even if they have an enrollment of fewer than 20 students identified as emergent bilingual students in any language classification in the same grade level district-wide and are not required to do so under subsection (a) of this section. Under this authorization, school districts shall adhere to all program requirements as described in §§89.1210 of this title, 89.1227 of this title (relating to Minimum Requirements for Dual Language Immersion Program Model), 89.1228 of this title (relating to Two-Way Dual Language Immersion Program Model Implementation), and 89.1229 of this title (relating to General Standards for Recognition of Dual Language Immersion Program Models).

- (g) In addition to the required bilingual and/or ESL programs, 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. Under this authorization, school districts shall adhere to all program requirements as described in §§89.1210, 89.1227, 89.1228, and 89.1229 of this title.

Statutory Authority: The provisions of this §89.1205 issued under the Texas Education Code, §§29.051-29.056, 29.0561, 29.057-29.064, and 29.066.

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§89.1207. Bilingual Education Exceptions and English as a Second Language 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) because of an insufficient number of appropriately certified teachers shall request from the commissioner of education an exception to the bilingual education program and the approval of a temporary alternative language program as defined in §89.1203(1) of this title (relating to Definitions) that aligns as closely as possible to the required bilingual program. Emergent bilingual students with parental approval for program participation under a bilingual education exception will be included in the bilingual education allotment designated for an alternative language 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 provide a sufficient number of appropriately certified teachers to offer the bilingual education program with supporting documentation as described in Texas Education Code (TEC), §29.054(b)(1), (2), and (3);
- (B) a description of the alternative language program and methods to meet the affective, linguistic, and cognitive needs of the emergent bilingual 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) to include foundation and enrichment areas, English language proficiency standards (ELPS), and college and career readiness standards (CCRS);
- (C) an assurance that appropriately certified teachers available in the school district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels to ensure effective early literacy development and that the linguistic and academic needs of emergent bilingual students with beginning and intermediate levels of English proficiency are served on a priority basis;
- (D) an assurance that the school district will implement a comprehensive professional development plan that:
- (i) is ongoing and targets the development of the knowledge, skills, and competencies needed to serve the needs of emergent bilingual students;
- (ii) includes the teachers who are not certified or not appropriately certified who are assigned to implement the temporary alternative language program that aligns closely to the required bilingual program; and
- (iii) may include additional teachers who work with emergent bilingual students;
- (E) an assurance that at least 10% of the total bilingual education allotment shall be used to fund the comprehensive professional development plan required under subparagraph (D)

of this paragraph when applying for a bilingual education exception, an English as a second language (ESL) waiver, or both;

- (F) an assurance that the school district will take actions to ensure that the program required under §89.1205(a) of this title will be provided the subsequent year, including its plans for recruiting an adequate number of appropriately certified teachers to eliminate the need for subsequent exceptions and measurable targets for the subsequent year as required by TEC, §29.054(b)(4); and
 - (G) an assurance that the school district shall satisfy the additional reporting requirements described in §89.1265(c) of this title (relating to Program Evaluation).
- (2) Documentation. A school district submitting a bilingual education exception shall maintain written records of all documents supporting the submission and assurances listed in paragraph (1) of this subsection, including:
- (A) a description of the proposed alternative language program designed to meet the affective, linguistic, and cognitive needs of the emergent bilingual students;
 - (B) the number of teachers for whom a bilingual education exception is needed by grade level and per campus;
 - (C) a copy of the school district's comprehensive professional development plan; and
 - (D) a copy of the bilingual allotment budget documenting that a minimum of 10% of the funds were used to fund the comprehensive professional development plan.
- (3) 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 emergent bilingual student performance on the required state assessments;
 - (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 Texas Education Agency (TEA); or
 - (C) reduces by 25% the number of teachers under exception for bilingual programs when compared to the number of exceptions granted the previous year.
- (4) 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.
- (5) 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.
- (6) Special accreditation investigation. The commissioner may authorize a special accreditation investigation under TEC, §39.057, if a school district is denied a bilingual education program exception for more than three consecutive years.
- (7) Sanctions. Based on the results of a special accreditation investigation, the commissioner may take appropriate action under TEC, §39.102.
- (b) ESL program.
- (1) Waivers. A school district that is unable to provide an ESL program as required by §89.1205(c) of this title because of an insufficient number of appropriately certified teachers shall request from the commissioner a waiver of the certification requirements for each teacher who will provide instruction in ESL for emergent bilingual students and the approval of a temporary alternative language program as defined in §89.1203(1) of this title that aligns closely to the required ESL program. Emergent bilingual students with parental approval for program participation under an ESL waiver will be included in the bilingual education allotment designated for an alternative

language program. 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 ESL 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 appropriately certified teachers to offer the ESL program as described in TEC, §29.054(b)(1), (2), and (3);
 - (B) a description of the alternative language program, including the manner in which the teachers in the ESL program will meet the affective, linguistic, and cognitive needs of the emergent bilingual 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 to include foundation and enrichment areas, ELPS, and CCRS;
 - (C) an assurance that appropriately 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 emergent bilingual students with beginning and intermediate levels of English proficiency are served on a priority basis;
 - (D) an assurance that the school district shall implement a comprehensive professional development plan that:
 - (i) is ongoing and targets the development of the knowledge, skills, and competencies needed to serve the needs of emergent bilingual students;
 - (ii) includes the teachers who are not certified or not appropriately certified who are assigned to implement the proposed alternative language program; and
 - (iii) may include additional teachers who work with emergent bilingual students;
 - (E) an assurance that at least 10% of the total bilingual education allotment shall be used to fund the comprehensive professional development plan required under subparagraph (D) of this paragraph when applying for a bilingual education exception, an ESL waiver, or both;
 - (F) an assurance that the school district will take actions to ensure that the program required under §89.1205(c) of this title will be provided the subsequent year, including its plans for recruiting an adequate number of appropriately certified teachers to eliminate the need for subsequent waivers as required by TEC, §29.054(b)(4); and
 - (G) an assurance that the school district shall satisfy the additional reporting requirements described in §89.1265(c) of this title.
- (2) Documentation. A school district submitting an ESL waiver shall maintain written records of all documents supporting the submission and assurances listed in paragraph (1) of this subsection, including:
- (A) a description of the proposed alternative language program designed to meet the affective, linguistic, and cognitive needs of the emergent bilingual students;
 - (B) the name and teaching assignment, per campus, of each teacher who is assigned to implement the ESL program and is under a waiver and the estimated date for the completion of the ESL supplemental certification, which must be completed by the end of the school year for which the waiver was requested;
 - (C) a copy of the school district's comprehensive professional development plan;
 - (D) a copy of the bilingual allotment budget documenting that a minimum of 10% of the funds were used to fund the comprehensive professional development plan; and
 - (E) a description of the actions taken to recruit an adequate number of appropriately certified teachers.

- (3) Approval of waivers. ESL waivers will be granted by the commissioner if the requesting school district:
 - (A) meets or exceeds the state average for emergent bilingual student performance on the required state assessments; or
 - (B) meets the requirements and measurable targets of the action plan described in paragraph (1)(G) of this subsection submitted the previous year and approved by TEA.
- (4) Denial of waivers. A school district denied an ESL program waiver must submit to the commissioner a detailed action plan for complying with required regulations for the following school year.
- (5) Appeals. A school district denied an ESL 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.
- (6) Special accreditation investigation. The commissioner may authorize a special accreditation investigation under TEC, §39.057, if a school district is denied an ESL waiver for more than three consecutive years.
- (7) Sanctions. Based on the results of a special accreditation investigation, the commissioner may take appropriate action under TEC, §39.102.

Statutory Authority: The provisions of this §89.1207 issued under the Texas Education Code, §§29.051-29.056, 29.0561, 29.057-29.064, and 29.066.

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§89.1210. Program Content and Design.

- (a) Each school district required to offer a bilingual education or English as a second language (ESL) program shall provide each emergent bilingual student 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 (LPAC) in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee). The school district shall accommodate the instruction, pacing, and materials to ensure that emergent bilingual students have a full opportunity to master the essential knowledge and skills of the required curriculum, which includes the Texas Essential Knowledge and Skills (TEKS) and English language proficiency standards (ELPS). Students participating in the bilingual education program may demonstrate their mastery of the essential knowledge and skills in either their primary language or in English for each content area.
 - (1) A bilingual education program of instruction established by a school district shall be a full-time program of dual-language instruction (English and primary language) that provides for learning academic and literacy skills in the primary language of the students enrolled in the program and for carefully structured and sequenced mastery of English language skills under Texas Education Code (TEC), §29.055(a).
 - (2) An ESL program of instruction established by a school district shall be a program of intensive instruction in English in which ESL teachers recognize and address language differences in accordance with TEC, §29.055(a).
- (b) The bilingual education program and ESL program shall be integral parts of the general educational program required under Chapter 74 of this title (relating to Curriculum Requirements) to include foundation and enrichment areas, ELPS, and college and career readiness standards. In bilingual education programs, school districts shall purchase instructional materials in both program languages with the district's instructional materials allotment or otherwise acquire instructional materials for use in bilingual education classes in accordance with TEC, §31.029(a). Instructional materials for bilingual education programs on the list adopted by the commissioner of education, as provided by TEC, §31.0231, may be used as curriculum tools to enhance the learning process. The school district shall provide for ongoing

coordination between the bilingual/ESL program and the general educational program. The bilingual education and ESL programs shall address the affective, linguistic, and cognitive needs of emergent bilingual students as follows.

- (1) Affective.
 - (A) Emergent bilingual students in a bilingual program shall be provided instruction using content-based language instructional methods and/or their primary language to acclimate students to the school environment and to develop academic language skills, which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall be designed to consider the students' learning experiences and shall incorporate the cultural aspects of the students' backgrounds in accordance with TEC, §29.055(b).
 - (B) Emergent bilingual students in an ESL program shall be provided instruction using content-based language instructional methods in English to acclimate students to the school environment and to develop academic language skills, which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall be designed to incorporate the students' primary languages and learning experiences and shall incorporate the cultural aspects of the students' backgrounds in accordance with TEC, §29.055(b).
- (2) Linguistic.
 - (A) Emergent bilingual students in a bilingual program shall be provided targeted and intentional academic language instruction to develop proficiency in listening, speaking, reading, and writing in both English and their primary language. 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, providing individualized linguistically accommodated content instruction commensurate with the students' language proficiency levels. The ELPS student expectations are provided for English development in conjunction with the TEKS.
 - (B) Emergent bilingual students in an ESL program shall be provided targeted and intentional academic language 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 in all subjects, providing individualized linguistically accommodated content instruction commensurate with the students' language proficiency levels. The ELPS student expectations are provided for English development in conjunction with the TEKS.
- (3) Cognitive.
 - (A) Emergent bilingual students in a bilingual program shall be provided instruction in reading and language arts, mathematics, science, and social studies in both their primary language and English, using content-based language instructional methods in either their primary language, English, or both, depending on the program model(s) implemented by the district. 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.
 - (B) Emergent bilingual students in an ESL program shall be provided instruction in English in reading and language arts, mathematics, science, and social studies using content-based language instructional 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.
- (c) The bilingual education program shall be implemented through at least one of the following program models.

- (1) Transitional bilingual/early exit is a bilingual program model in which students identified as emergent bilingual students are served in both English and the students' primary language and are prepared to meet reclassification criteria to be successful in English instruction with no second language acquisition supports not earlier than two or later than five years after the student enrolls in school. Instruction in this program is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061(b)(1), for the assigned grade level and content area. The goal of early-exit transitional bilingual education is for program participants to use their primary language as a resource while acquiring full proficiency in English. This model provides instruction in literacy and academic content through the medium of the students' primary language and English using content-based language instruction methods.
 - (2) Transitional bilingual/late exit is a bilingual program model in which students identified as emergent bilingual students are served in both English and the students' primary language and are prepared to meet reclassification criteria to be successful in English instruction with no second language acquisition supports not earlier than six or later than seven years after the student enrolls in school. Instruction in this program is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061(b)(2), for the assigned grade level and content area. The goal of late-exit transitional bilingual education is for program participants to use their primary language as a resource while acquiring full proficiency in English. This model provides instruction in literacy and academic content through the medium of the students' primary language and English through content-based language instruction.
 - (3) Dual language immersion/one-way is a bilingual/biliteracy program model in which students identified as emergent bilingual students are served in both English and the program's partner language and are prepared to meet reclassification criteria in order to be successful in English instruction with no second language acquisition supports not earlier than six or later than seven years after the student enrolls in school. Instruction provided in the partner language and English is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061. When the instructional time for both the partner language and English is 50%, a paired-teaching arrangement may be utilized in which instruction provided in English may be delivered either by a teacher appropriately certified in bilingual education or by a different teacher certified in ESL in accordance with TEC, §29.061. The goal of one-way dual language immersion is for program participants to attain bilingualism and biliteracy in English and the partner language. This model provides ongoing instruction in literacy and academic content through content-based language instruction in English as well as the students' primary language, with at least half of the instruction delivered in the students' primary language for the duration of the program.
 - (4) Dual language immersion/two-way is a bilingual/biliteracy program model in which students identified as emergent bilingual students are integrated with non-emergent bilingual students and are served in both English and the program's partner language and are prepared to meet reclassification criteria in order to be successful in English instruction with no second language acquisition supports not earlier than six or later than seven years after the student enrolls in school. Instruction provided in English and the partner language is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061. When the instructional time for both the partner language and English is 50%, a paired-teaching arrangement may be utilized in which instruction provided in English may be delivered either by a teacher appropriately certified in bilingual education or by a different teacher certified in ESL in accordance with TEC, §29.061. The goal of two-way dual language immersion is for program participants to attain bilingualism and biliteracy in English as well as the partner language. This model provides ongoing instruction in literacy and academic content through content-based language instruction in English and the partner language with at least half of the instruction delivered in the partner language for the duration of the program.
- (d) The ESL program shall be implemented through one of the following program models.
- (1) An ESL/content-based program model is an English acquisition program that serves students identified as emergent bilingual students through English instruction provided by a teacher appropriately certified in ESL under TEC, §29.061(c), using content-based language instruction

methods in reading and language arts, mathematics, science, and social studies. The goal of content-based ESL is for emergent bilingual students to attain full proficiency in English in order to participate equitably in school.

- (2) An ESL/pull-out program model is an English acquisition program that serves students identified as emergent bilingual students through English instruction using content-based language instruction methods provided by an appropriately certified ESL teacher under TEC, §29.061(c), through English reading and language arts in a pull-out or inclusionary delivery setting. The goal of ESL pull-out is for emergent bilingual students to attain full proficiency in English in order to participate equitably in school.
- (e) Except in the courses specified in subsection (f) of this section, content-based language instructional methods, which may involve the use of the students' primary language, may be provided in any of the courses or electives required for promotion or graduation to assist students identified as emergent bilingual students to master the essential knowledge and skills for the required subject(s). The use of content-based language instruction shall not impede the awarding of credit toward meeting promotion or graduation requirements.
- (f) In subjects such as art, music, and physical education, emergent bilingual students shall participate with their non-emergent bilingual peers in general education classes provided in the subjects. As noted in TEC, §29.055(d), elective courses included in the curriculum may be taught in a partner language. The school district shall ensure that emergent bilingual students enrolled in bilingual education and ESL programs have a meaningful opportunity to participate with non-emergent bilingual peers in all extracurricular activities.
- (g) The required bilingual education or ESL program shall be provided to every emergent bilingual student with parental approval until such time that the student meets reclassification criteria as described in §89.1226(i) of this title (relating to Testing and Classification of Students) or graduates from high school. Parental approval is required when the LPAC recommends continued dual language immersion program participation beyond reclassification.

Statutory Authority: The provisions of this §89.1210 issued under the Texas Education Code, §§29.051-29.056, 29.0561, 29.057-29.064, and 29.066.

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§89.1215. Home Language Survey.

- (a) For each new student enrolling for the first time in a Texas public school in any grade from prekindergarten through Grade 12, the Texas Education Agency (TEA)-developed home language survey shall be administered. This home language survey will serve as the original and only home language survey throughout the student's educational experience in Texas public schools. School districts shall require that the survey be signed by the student's parent for each student in prekindergarten through Grade 8 or by the student in Grades 9-12 as permitted under Texas Education Code, §29.056(a)(1). It is the school district's responsibility to ensure that the student's parent understands the language used in the survey and its implications. The original copy of the survey shall be kept in the student's permanent record and transferred to any subsequent Texas public school districts in which the student enrolls.
- (b) The TEA-developed home language survey shall be administered in English and a language that the parents can understand. The home language survey shall include the following questions.
 - (1) " Which languages are used at home ?"
 - (2) " Which languages are used by the child at home ?"
 - (3) "If the child had a previous home setting, which languages were used ? If there was no previous home setting, answer Not Applicable (N/A)."

- (c) If any response on the home language survey indicates that a language other than English is or was used for communication, the student shall be tested in accordance with §89.1226 of this title (relating to Testing and Classification of Students).
- (d) For students previously enrolled in a Texas public school, the receiving district shall secure the student records, including the original home language survey and language proficiency assessment committee documentation as described in §89.1220(l) of this title (relating to Language Proficiency Assessment Committee), as applicable. All attempts to contact the sending district to request records shall be documented. Multiple attempts to obtain the student's original home language survey shall be made.
- (e) If a parent determines an error was made when completing the original home language survey, the parent may request a correction only if:
 - (1) the student has not yet been assessed for English proficiency; and
 - (2) corrections are made within two calendar weeks of the student's initial enrollment date in Texas public schools.

Statutory Authority: The provisions of this §89.1215 issued under the Texas Education Code, §§29.051-29.056, 29.0561, 29.057-29.064, and 29.066.

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; amended to be effective July 15, 2018, 43 TexReg 4731; amended to be effective April 14, 2020, 45 TexReg 2415; amended to be effective August 9, 2023, 48 TexReg 4247.

§89.1220. Language Proficiency Assessment Committee.

- (a) School districts shall by local board policy establish and operate one or more language proficiency assessment committees (LPACs). The school district shall have on file a policy and procedures for the selection, appointment, and orientation of members of the LPAC(s).
- (b) The LPAC shall include an appropriately certified bilingual educator (for students served through a bilingual education program), an appropriately certified English as a second language (ESL) educator (for students served through an ESL program), a parent of an emergent bilingual student participating in a bilingual or ESL program, and a campus administrator in accordance with Texas Education Code (TEC), §29.063.
- (c) In addition to the three required members of the LPAC, the school district may add other trained members to the committee.
- (d) No parent serving on the LPAC shall be an employee of the school district.
- (e) A school district shall establish and operate a sufficient number of LPACs to enable them to discharge their duties within four weeks of the enrollment of an emergent bilingual student.
- (f) All members of the LPAC, 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 of all members of the LPAC, including the parents. The LPAC may use alternative meeting methods, such as phone or video conferencing and the use of electronic signatures that adhere to district policy.
- (g) Upon a student's initial enrollment in Texas public schools, a student's transfer from a previous Texas public school district, and at the end of each school year, the LPAC shall review all pertinent information on all potential and identified emergent bilingual students, including emergent bilingual students with a parental denial of program participation, in accordance with §89.1226 of this title (relating to Testing and Classification of Students).
 - (1) For students initially enrolling in Texas public schools, the LPAC shall:
 - (A) designate the language proficiency level of each emergent bilingual student in accordance with the guidelines issued pursuant to §89.1226(b)-(f) of this title;

- (B) recommend, subject to parental approval, the initial instructional placement of each emergent bilingual student in the required bilingual or ESL program without restricting access due to scheduling, staffing, or class size constraints; and
 - (C) facilitate the participation of emergent bilingual students in other special programs for which they are eligible while ensuring full access to the language program required under TEC, §29.053.
- (2) For transferring students previously enrolled in a Texas public school district, the LPAC shall:
- (A) review permanent record and LPAC documentation from the previous Texas school district to determine if the student has been identified as an emergent bilingual student based on the original home language survey and initial identification process;
 - (B) determine the continuation of the required bilingual or ESL program participation with parental approval for students previously identified as emergent bilingual or determine the need for monitoring of students who have previously met reclassification and are in their first two years of monitoring;
 - (C) review linguistic progress and academic achievement data of each emergent bilingual student to inform instructional practices; and
 - (D) facilitate the participation of emergent bilingual students in other special programs for which they are eligible while ensuring full access to the language program required under TEC, §29.053.
- (3) At the end of the school year, for all identified emergent bilingual students, including emergent bilingual students with a parental denial of program participation, the LPAC shall:
- (A) review language proficiency progress in English and, to the extent possible, the primary language of each emergent bilingual student;
 - (B) review academic achievement data in English and, to the extent possible, the primary language of each emergent bilingual student;
 - (C) reclassify eligible emergent bilingual students as English proficient in accordance with the criteria described in §89.1226(i) of this title;
 - (D) recommend exit from program of reclassified English proficient students, pending parental approval, or continuation of program participation for reclassified students participating in a dual language immersion one-way or two-way program model, according to the goals of the program; and
 - (E) prepare parental reports on student progress for all identified emergent bilingual students to be provided to parents within the first 30 calendar days after the beginning of the next school year, which include data on linguistic and academic progress, benefits of bilingual or ESL program participation, and the criteria for reclassification as English proficient.
- (h) The LPAC shall give written notice to the student's parent, informing the parent that the student has been identified as an emergent bilingual student and requesting approval to place the student in the required bilingual education or ESL program not later than the 10th calendar day after the date of the student's classification in accordance with TEC, §29.056. The notice shall include information about the benefits of the bilingual education or ESL program for which the student has been recommended and that it is an integral part of the school program.
- (i) Before the administration of the state criterion-referenced test each year, the LPAC shall determine the appropriate assessment option for each emergent bilingual student 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).
- (j) Pending completion of the identification process, receipt of LPAC documentation for transferring students, or parental approval of an identified emergent bilingual student's placement into the bilingual education or ESL program recommended by the LPAC, the school district shall place the student in the recommended

program. Only emergent bilingual students with parental approval for program participation will be included in the bilingual education allotment.

- (k) The LPAC shall monitor the academic progress of each student, including any student who previously had a parental denial of program participation, who has met criteria for reclassification in accordance with TEC, §29.056(g), for the first two years after reclassification. If the student earns a failing grade in a subject in the foundation curriculum under TEC, §28.002(a)(1), during any grading period in the first two school years after the student is reclassified, the LPAC shall determine, based on the student's second language acquisition needs, whether the student may require targeted instruction or, after careful consideration of multiple linguistic and academic data points, should be reconsidered for placement in a bilingual education or ESL program. In accordance with TEC, §29.0561, the LPAC shall review the student's performance and consider, at a minimum, the following:
- (1) the total amount of time the student was enrolled in a bilingual education or ESL program;
 - (2) the student's grades each grading period in each subject in the foundation curriculum under TEC, §28.002(a)(1);
 - (3) the student's performance on each assessment instrument administered under TEC, §39.023(a) or (c);
 - (4) the number of credits the student has earned toward high school graduation, if applicable; and
 - (5) any disciplinary actions taken against the student under TEC, Chapter 37, Subchapter A (Alternative Settings for Behavior Management).
- (l) The student's permanent record shall contain documentation of all actions impacting the emergent bilingual student.
- (1) Documentation shall include:
 - (A) the original home language survey;
 - (B) the identification of the student as an emergent bilingual student;
 - (C) the designation of the student's level of language proficiency;
 - (D) the recommendation of program placement;
 - (E) parental approval or denial of placement into the program;
 - (F) the date of placement in the program;
 - (G) assessment information as outlined in Chapter 101, Subchapter AA, of this title;
 - (H) additional instructional linguistic accommodations provided to address the specific language needs of the student;
 - (I) the date of reclassification and the date of exit from the program with parental approval; and
 - (J) the results of monitoring for academic success, including students formerly classified as emergent bilingual students, as required under 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 place a student in or exit a student from a program without written approval of the student's parent if:
- (1) the student is 18 years of age or has had the disabilities of minority removed;
 - (2) the parent provides approval through a phone conversation or e-mail that is documented in writing and retained; or

- (3) an adult who the school district recognizes as standing in parental relation to the student provides written approval. This may include a foster parent or employee of a state or local governmental agency with temporary possession or control of the student.

Statutory Authority: The provisions of this §89.1220 issued under the Texas Education Code, §§29.051-29.056, 29.0561, 29.057-29.064, and 29.066.

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; amended to be effective July 15, 2018, 43 TexReg 4731; amended to be effective April 14, 2020, 45 TexReg 2415; amended to be effective August 9, 2023, 48 TexReg 4247.

§89.1226. Testing and Classification of Students.

- (a) The single state-approved English language proficiency test for identification of emergent bilingual students described in subsection (c) of this section shall be used as part of the standardized, statewide identification process.
- (b) Within four calendar weeks of initial enrollment in a Texas public school, a student with a language other than English indicated on the home language survey shall be administered the state-approved English language proficiency test for identification as described in subsection (c) of this section and shall be identified as emergent bilingual and recommended for placement into the required bilingual education or English as a second language (ESL) program in accordance with the criteria listed in subsection (f) of this section.
- (c) To identify emergent bilingual students, 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, the listening and speaking components of the state-approved English language proficiency test for identification; and
 - (2) in Grades 2-12, the listening, speaking, reading, and writing components of the state-approved English language proficiency test for identification.
- (d) School districts that provide a bilingual education program at the elementary grades shall administer a language proficiency test in the primary language of the student who is eligible to be served in the bilingual education program. If the primary language of the student is Spanish, the school district shall administer the Spanish version of the state-approved language proficiency test for identification. If a state-approved language proficiency test for identification is not available in the primary language of the student, the school district shall determine the student's level of proficiency using informal oral language assessment measures.
- (e) All language proficiency testing shall be administered by professionals or paraprofessionals who are proficient in the language of the test and trained in the language proficiency testing requirements of the test publisher.
- (f) For placement into a bilingual education or ESL program, a student shall be identified as emergent bilingual using the following criteria.
 - (1) In prekindergarten through Grade 1, the student's score(s) from the listening and/or speaking components on the state-approved English language proficiency test for identification is/are below the level designated for indicating English proficiency.
 - (2) In Grades 2-12, the student's score(s) from the listening, speaking, reading, and/or writing components on the state-approved English language proficiency test for identification is/are below the level designated for indicating English proficiency.
- (g) A student shall be identified as emergent bilingual if the student's beginning English language skills interfere with the completion of the English language proficiency assessment described in subsection (c) of this section.

- (h) The language proficiency assessment committee (LPAC), in conjunction with the admission, review, and dismissal (ARD) committee, shall identify a student as emergent bilingual if the student's disabilities interfere with the completion of the English language proficiency assessment described in subsection (c) of this section. The decision for placement into a bilingual education or ESL program shall be recommended by the LPAC, in conjunction with the ARD committee, in accordance with §89.1220(f) of this title (relating to Language Proficiency Assessment Committee), ensuring access to both the bilingual education or ESL program and the special education and related services needed to provide a free, appropriate public education as identified in the student's individualized education program.
- (i) An emergent bilingual student may be reclassified as English proficient only at the end of the school year in which a student routinely demonstrates readiness for reclassification as English proficient and the ability to successfully participate in grade level content instruction that is delivered with no second language acquisition supports. This determination shall be based upon all of the following:
 - (1) a composite proficiency rating, which includes ratings in the areas of listening, speaking, reading, and writing, on the state-approved English language proficiency test for reclassification that is designated for indicating English proficiency;
 - (2) passing standard met on the reading assessment instrument under Texas Education Code (TEC), §39.023(a), or, for students at grade levels not assessed by the aforementioned reading assessment instrument, a score at or above the 40th percentile on both the English reading and the English language arts sections of the state-approved norm-referenced standardized achievement instrument; and
 - (3) the results of a subjective teacher evaluation using the state's standardized rubric.
- (j) An emergent bilingual student may not be reclassified as English proficient in prekindergarten or Kindergarten. A school district must ensure that emergent bilingual students are prepared to meet academic standards required by TEC, §28.0211.
- (k) An emergent bilingual student may not be reclassified as English proficient if the LPAC has recommended designated supports or accommodations on the state reading assessment instrument based on the student's second language acquisition needs. Designated supports or accommodations for non-linguistic purposes that are recommended for student use by any other committee, including the ARD committee for students served in special education, do not prevent the student from being eligible to reclassify.
- (l) For emergent bilingual students who are also eligible for special education services, the standardized process for emergent bilingual student reclassification is followed in accordance with applicable provisions of subsection (i) of this section. However, annual meetings to review student progress and make recommendations for reclassification must be made in all instances by the LPAC, in conjunction with the ARD committee, in accordance with §89.1230(b) of this title (relating to Eligible Students with Disabilities). Additionally, the LPAC, in conjunction with the ARD committee, shall determine participation and designated support or accommodation decisions on state criterion-referenced and English language proficiency assessments that differentiate between language proficiency and disabling conditions in accordance with §89.1230(a) of this title.
- (m) For an emergent bilingual student with a significant cognitive disability, the LPAC, in conjunction with the ARD committee, may recommend that the state's criterion-referenced and English language proficiency assessments used for reclassification are not appropriate because of the nature of the student's disabling condition. In these cases, the LPAC, in conjunction with the ARD committee, may recommend that the student take the state's alternate criterion-referenced and alternate English language proficiency assessments. Additionally, the LPAC, in conjunction with the ARD committee, may utilize the individualized reclassification process to determine appropriate performance standard requirements for the state standardized reading assessment and English language proficiency assessment by language domain under subsection (i)(1) of this section and utilize the results of a subjective teacher evaluation using the state's standardized alternate rubric.
- (n) Notwithstanding §101.101 of this title (relating to Group-Administered Tests), all tests used for the purpose of identification and reclassification of students and approved by TEA must be re-normed at least every eight years.

Statutory Authority: The provisions of this §89.1226 issued under the Texas Education Code, §§29.051-29.056, 29.0561, 29.057-29.064, and 29.066.

Source: The provisions of this §89.1226 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; amended to be effective July 1, 2019, 43 TexReg 4731; amended to be effective April 14, 2020, 45 TexReg 2415; amended to be effective August 9, 2023, 48 TexReg 4247.

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

- (a) A dual language immersion (DLI) program model, one-way or two-way, shall address all curriculum requirements specified in Chapter 74, Subchapter A, of this title (relating to Required Curriculum) to include foundation and enrichment areas in both English and the program's partner language, the English language proficiency standards, and college and career readiness standards.
- (b) A DLI program model shall be a full-time program of academic instruction in the program's partner language and English for all program participants, emphasizing the participation of identified emergent bilingual students. Access to the DLI program shall not be restricted based on race, creed, color, religious affiliation, age, or disability.
- (c) A DLI program model shall provide equitable, authentic resources in English and the program's partner language to ensure development of bilingualism and biliteracy.
- (d) The district shall develop a language allocation plan that ensures a minimum of 50% of content area instructional time is provided in the program's partner language for the duration of the program.
- (e) Program implementation shall:
 - (1) begin at prekindergarten, Kindergarten, or Grade 1, as applicable, according to the district's earliest grade level provided;
 - (2) continue without interruption incrementally through the elementary grades;
 - (3) consider expansion to middle school and high school whenever possible; and
 - (4) include participation of former emergent bilingual students who have reclassified as English proficient for the duration of the program.
- (f) A DLI program model shall be developmentally appropriate and based on current best practices identified in research. Particularly, emergent bilingual students shall not be restricted access to the DLI program model, one-way or two-way, based on any linguistic or academic achievement measures in the program's partner language or English.

Statutory Authority: The provisions of this §89.1227 issued under the Texas Education Code, §§29.051, 29.053, 29.054, 29.055, 29.056, 29.0561, 29.057, 29.058, 29.059, 29.060, 29.061, 29.062, 29.063, 29.064, and 29.066.

Source: The provisions of this §89.1227 adopted to be effective May 28, 2012, 37 TexReg 3822; amended to be effective July 15, 2018, 43 TexReg 4731; amended to be effective August 9, 2023, 48 TexReg 4247.

§89.1228. Two-Way Dual Language Immersion Program Model Implementation.

- (a) Student enrollment in a two-way dual language immersion (DLI) program model is optional for non-emergent bilingual students in accordance with §89.1233(a) of this title (relating to Participation of Non-Emergent Bilingual Students).
- (b) A two-way DLI program model shall fully disclose candidate selection criteria and ensure that access to the program is not based on race, creed, color, religious affiliation, age, or disability. Additionally, identified emergent bilingual students and non-emergent bilingual students shall not be restricted access to the two-way DLI program model based on any linguistic or academic achievement measures in the program's partner language or English.
- (c) A school district implementing a two-way DLI program model shall develop a policy on enrollment and continuation for students in this program model. The policy shall address:

- (1) equitable access, including the program's intention to maintain a ratio of 50% emergent bilingual students to 50% non-emergent bilingual students and have no more than two-thirds speakers of the partner language to one-third speakers of English in each classroom;
 - (2) program goals and benefits;
 - (3) the district's commitment to providing equitable access to services for emergent bilingual students and to ensuring continuity of program for all program participants;
 - (4) the program's language allocation plan for the grade levels in which the program will be implemented;
 - (5) support of program goals as stated in §89.1210 of this title (relating to Program Content and Design); and
 - (6) expectations for students and parents.
- (d) A school district implementing a two-way DLI program model shall obtain written parental approval as follows.
- (1) For emergent bilingual students, written parental approval is obtained in accordance with §89.1240 of this title (relating to Parental Authority and Responsibility).
 - (2) For non-emergent bilingual students, written parental approval is obtained through a school district-developed process.
- (e) A school district implementing a two-way DLI program model shall determine the appropriate assessment option for program participants as follows.
- (1) For emergent bilingual students, the language proficiency assessment committee (LPAC) shall convene before the administration of the state criterion-referenced test each year to determine the appropriate assessment option for each emergent bilingual student in accordance with §89.1220(i) of this title (relating to Language Proficiency Assessment Committee).
 - (2) For non-emergent bilingual students, the appropriate assessment option for the administration of the state criterion-referenced test each year is determined by the LPAC or through a school district-developed process.

Statutory Authority: The provisions of this §89.1228 issued under the Texas Education Code, §§29.051-29.056, 29.0561, 29.057-29.064, and 29.066.

Source: The provisions of this §89.1228 adopted to be effective May 28, 2012, 37 TexReg 3822; amended to be effective July 15, 2018, 43 TexReg 4731; amended to be effective April 14, 2020, 45 TexReg 2415; amended to be effective August 9, 2023, 48 TexReg 4247.

§89.1229. General Standards for Recognition of Dual Language Immersion Program Models.

- (a) School recognition. A school district may recognize one or more of its schools that implement an exceptional dual language immersion (DLI) program model if the school meets all of the following criteria.
 - (1) The school must meet the minimum requirements stated in §89.1227 of this title (relating to Minimum Requirements for Dual Language Immersion Program Model).
 - (2) The school must receive an acceptable performance rating in the state accountability system.
 - (3) The school must not be identified for any stage of intervention for the district's bilingual and/or English as a second language program under the state's accountability system.
- (b) Student recognition. A student participating in a (DLI) program model or any other state-approved bilingual or English as a second language program model may be recognized by the program and its local school district board of trustees by earning a performance acknowledgement in accordance with §74.14 of this title (relating to Performance Acknowledgments).

Statutory Authority: The provisions of this §89.1229 issued under the Texas Education Code, §§29.051, 29.053, 29.054, 29.055, 29.056, 29.0561, 29.057, 29.058, 29.059, 29.060, 29.061, 29.062, 29.063, 29.064, and 29.066.

Source: The provisions of this §89.1229 adopted to be effective July 15, 2018, 43 TexReg 4731; amended to be effective August 9, 2023, 48 TexReg 4247.

§89.1230. Eligible Students with Disabilities.

- (a) For students with disabilities, school districts shall utilize the state's criteria for identification of emergent bilingual students as described in §89.1226(f) of this title (relating to Testing and Classification of Students) and shall establish placement procedures that ensure that the placement recommendation by the language proficiency assessment committee (LPAC), in conjunction with the admission, review, and dismissal (ARD) committee, in a bilingual education or English as a second language program is not refused based on the student's disabling condition.
- (b) LPAC members shall meet in conjunction with ARD committee members to review progress and provide recommendations regarding the educational needs of each emergent bilingual student who also qualifies for services in the school district's special education program.

Statutory Authority: The provisions of this §89.1230 issued under the Texas Education Code, §§29.051, 29.053, 29.054, 29.055, 29.056, 29.0561, 29.057, 29.058, 29.059, 29.060, 29.061, 29.062, 29.063, 29.064, and 29.066.

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; amended to be effective July 15, 2018, 43 TexReg 4731; amended to be effective August 9, 2023, 48 TexReg 4247.

§89.1233. Participation of Non-Emergent Bilingual Students.

- (a) School districts shall fulfill their obligation to provide access to the required bilingual program to emergent bilingual students in accordance with Texas Education Code (TEC), §29.053.
- (b) School districts may enroll non-emergent bilingual students in the bilingual education program or the ESL program in accordance with TEC, §29.058.
- (c) The number of participating non-emergent bilingual students shall not exceed 40% of the number of students enrolled in the bilingual education program district-wide in accordance with TEC, §29.058.

Statutory Authority: The provisions of this §89.1233 issued under the Texas Education Code, §§29.051-29.056, 29.0561, 29.057-29.064, and 29.066.

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; amended to be effective July 15, 2018, 43 TexReg 4731; amended to be effective April 14, 2020, 45 TexReg 2415; amended to be effective August 9, 2023, 48 TexReg 4247.

§89.1235. Facilities.

Bilingual education and English as a second language (ESL) programs shall be located in the public schools of the school district with equitable access to all educational resources rather than in separate facilities. In order to provide the required bilingual education or ESL programs, school districts may concentrate the programs at a limited number of facilities within the school district. Recent immigrant emergent bilingual students shall not remain enrolled in newcomer centers for longer than two years.

Statutory Authority: The provisions of this §89.1235 issued under the Texas Education Code, §§29.051, 29.053, 29.054, 29.055, 29.056, 29.0561, 29.057, 29.058, 29.059, 29.060, 29.061, 29.062, 29.063, 29.064, and 29.066.

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; amended to be effective July 15, 2018, 43 TexReg 4731; amended to be effective August 9, 2023, 48 TexReg 4247.

§89.1240. Parental Authority and Responsibility.

- (a) The parent shall be notified in English and the parent's primary language that their child has been identified as an emergent bilingual student and recommended for placement in the required bilingual education or English as a second language (ESL) program using the Texas Education Agency (TEA)-developed identification and placement letter. The parent shall be provided information describing the bilingual

education or ESL program recommended, its benefits and goals, and its being an integral part of the school program to ensure that the parent understands the purposes and content of the program and their parental rights. Procedures for parental approval include the following.

- (1) The placement of a student in the bilingual education or ESL program must be approved in writing by the student's parent, or through allowable alternatives described in §89.1220(m) of this title (relating to Language Proficiency Assessment Committee), in order to have the student included in the bilingual education allotment.
 - (2) The parent's approval shall be considered valid for the student's continued participation in the required bilingual education or ESL program until the student meets the reclassification criteria described in §89.1226(i) of this title (relating to Testing and Classification of Students), the student graduates from high school, or a change occurs in program placement. A change between bilingual education and ESL program placement requires new parental approval using the TEA-developed change in placement letter.
 - (3) If a parent denies program placement at any point, the TEA-developed denial letter shall be used to ensure parents are informed of the implications of program denial, including understanding that the child will continue to be identified as an emergent bilingual student and will continue to be assessed annually using the Texas English Language Proficiency Assessment System (TELPAS) until reclassification criteria have been met.
- (b) The school district shall use the TEA-developed letter to give written notification to the student's parent of the student's reclassification as English proficient and acquire written approval for his or her exit from the bilingual education or ESL program as required under Texas Education Code, §29.056(a). Students meeting reclassification criteria who have been recommended for exit by the language proficiency assessment committee (LPAC) may only exit the bilingual education or ESL program with parental approval. Parental approval is also required for students participating in a dual language immersion program who have met reclassification criteria and for whom the LPAC has recommended continued program participation as an English proficient student.
- (c) The parent of a student enrolled in a school district that is required to offer bilingual education or ESL 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).

Statutory Authority: The provisions of this §89.1240 issued under the Texas Education Code, §§29.051-29.056, 29.0561, 29.057-29.064, and 29.066.

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; amended to be effective July 15, 2018, 43 TexReg 4731; amended to be effective April 14, 2020, 45 TexReg 2415; amended to be effective August 9, 2023, 48 TexReg 4247.

§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 (ESL) programs in accordance with Texas Education Code (TEC), §29.061, concerning bilingual education and ESL program teachers. School districts that are unable to secure a sufficient number of appropriately certified bilingual education and/or ESL teachers to provide the required programs may request activation of the appropriate permits 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 ESL 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 Bilingual Education Exceptions and English as a Second Language Waivers) or a waiver of the certification requirements in the ESL program as provided in §89.1207(b) of this title as needed.

- (c) Teachers assigned to the bilingual education program and/or ESL program may receive salary supplements through bilingual education allotment funds as authorized by TEC, §48.105.
- (d) School districts may compensate teachers and aides assigned to bilingual education and ESL programs for participation in professional development designed to increase their skills or lead to bilingual education or ESL certification.
- (e) 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 ESL programs.
- (f) The Texas Education Agency shall develop, in collaboration with education service centers, resources for implementing bilingual education and ESL training programs. The materials shall provide a framework for:
 - (1) developmentally appropriate bilingual education programs for early childhood through the elementary grades;
 - (2) affectively, linguistically, and cognitively appropriate instruction in bilingual education and ESL programs in accordance with §89.1210(b)(1)-(3) of this title (relating to Program Content and Design); and
 - (3) developmentally appropriate programs for emergent bilingual students identified with multiple needs and/or exceptionalities.

Statutory Authority: The provisions of this §89.1245 issued under the Texas Education Code, §§29.051-29.056, 29.0561, 29.057-29.064, and 29.066.

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; amended to be effective July 15, 2018, 43 TexReg 4731; amended to be effective April 14, 2020, 45 TexReg 2415; amended to be effective August 9, 2023, 48 TexReg 4247.

§89.1250. Required Summer School Programs.

Summer school programs that are provided under Texas Education Code (TEC), §29.060, for emergent bilingual students 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) Emergent bilingual students 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, including instruction in English and the primary or partner language according to the program model.
 - (C) The program shall address the affective, linguistic, and cognitive needs of the emergent bilingual students in accordance with §89.1210(b) 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 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 identified as an emergent bilingual student; and
 - (ii) a parent must have approved placement of the emergent bilingual student 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 §89.1226(b)-(f) of this title (relating to Testing and Classification of Students) prior to participation in the summer school program.

- (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 1.
 - (D) A school district is not required to provide transportation for the summer program.
 - (E) Teachers shall possess certification as required in 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 TEC, §29.153.
- (4) Funding and records for programs.
- (A) A school district shall use state and local funds for program purposes.
 - (i) Available funds appropriated by the legislature for the support of summer school programs provided under 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 1. 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 fewer than 10 students district-wide desiring to participate is not required to operate the program. However, those school districts must document that they have encouraged students' participation in multiple ways.
 - (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.

Statutory Authority: The provisions of this §89.1250 issued under the Texas Education Code, §§29.051-29.056, 29.0561, 29.057-29.064, and 29.066.

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; amended to be effective July 15, 2018, 43 TexReg 4731; amended to be effective April 14, 2020, 45 TexReg 2415; amended to be effective August 9, 2023, 48 TexReg 4247.

§89.1265. Program Evaluation.

- (a) All school districts required to implement a bilingual education or English as a second language (ESL) program shall conduct an annual evaluation in accordance with Texas Education Code (TEC), §29.053, collecting a full range of data to determine program effectiveness to ensure student academic success. The annual evaluation report shall be presented to the board of trustees before November 1 of each year and the report shall be retained at the school district level in accordance with TEC, §29.062.
- (b) Annual school district reports of educational performance shall reflect:
 - (1) the academic progress in the language(s) of instruction for emergent bilingual students by bilingual education and/or ESL program model;
 - (2) the extent to which emergent bilingual students are developing English proficiency by bilingual education and/or ESL program model, including proficiency in the partner language for students participating in a dual language immersion program model;
 - (3) the number of students who have been reclassified as English proficient and their continued academic progress after reclassification; and
 - (4) the number of teachers and aides trained and the frequency, scope, and results of the professional development in approaches and strategies that support second language acquisition.
- (c) In addition, for those school districts that filed in the previous year and/or will be filing a bilingual education exception and/or ESL waiver in the current year, the annual district report of educational performance shall also reflect:
 - (1) the number of teachers for whom a bilingual education exception or ESL waiver was/is being filed;
 - (2) the number of teachers for whom a bilingual education exception or ESL waiver was filed in the previous year who successfully obtained certification;
 - (3) the frequency and scope of a comprehensive professional development plan, implemented as required under §89.1207 of this title (relating to Bilingual Education Exceptions and English as a Second Language Waivers), and results of such plan if a bilingual education exception and/or ESL waiver was filed in the previous school year; and
 - (4) the number of students under the bilingual education exception or ESL waiver who were/are temporarily served in an alternative language program.
- (d) School districts shall report to parents the progress of their child in acquiring English as a result of participation in the program offered to emergent bilingual students.
- (e) In alignment with the district improvement plan, 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 TEC, §11.253, for the purpose of improving student performance for emergent bilingual students.

Statutory Authority: The provisions of this §89.1265 issued under the Texas Education Code, §§29.051-29.056, 29.0561, 29.057-29.064, and 29.066.

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; amended to be effective July 15, 2018, 43 TexReg 4731; amended to be effective April 14, 2020, 45 TexReg 2415; amended to be effective August 9, 2023, 48 TexReg 4247.