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**Note:** The terms emergent bilingual, English language learner (ELL), English learner, and limited English proficiency (LEP) student are used interchangeably.

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**Title III Requirements** A district that receives funds under Title III of the Elementary and Secondary Education Act shall comply with the statutory requirements regarding English learners and immigrant students. *20 U.S.C. 6801–7014*

A district that receives funds under Title I or Title III to provide a language instruction educational program shall, not later than 30 days after the beginning of the school year, inform the parents of an English learner identified for participation in such a program of the information required by 20 U.S.C. 6312(e)(3). *20 U.S.C. 6312(e)(3)*

**Definitions** “Certified English as a second language teacher” is synonymous with the term “professional transitional language educator” used in Education Code 29.063.

“Dual language immersion” means a state-approved bilingual program model in accordance with Education Code 29.066.

“Emergent bilingual student” means a student whose primary language is other than English and whose English language skills are such that the student has difficulty performing ordinary classwork in English.

“English learner (EL)” is a student who is in the process of acquiring English and has another language as the primary or home language.

“Exit” refers to the point when a student is no longer classified as LEP/EL (i.e., the student is reclassified), no longer requires bilingual or ESL program services, and is classified as non-LEP/English proficient (EP) in the Texas Student Data System Public Education Information Management System. The term “exit” is synonymous with the description in Education Code, Chapter 29, of “transferring out” of bilingual or special language programming.

“Parent” includes the parent or legal guardian of the student in accordance with Education Code 29.052.

*Education Code 29.052; 19 TAC 89.1203(2)–(3), (7)–(8), (13)*

**District  
Responsibility**

Each district shall:

1. Identify English learners based on criteria established by the state;

2. Provide bilingual education and ESL programs as integral parts of the general program;
3. Seek appropriately certified teaching personnel to ensure that English learners are afforded full opportunity to master the essential knowledge and skills; and
4. Assess achievement for essential knowledge and skills in accordance with Education Code Chapter 29 to ensure accountability for English learners and the schools that serve them.

*19 TAC 89.1201(a)*

**Identification of  
Emergent Bilingual  
Students**

Within the first four weeks of the first day of school, the language proficiency assessment committee (LPAC) shall determine and report to the board the number of emergent bilingual students on each campus and shall classify each student according to the language in which the student possesses primary proficiency. A board shall report that information to TEA before November 1 each year. *Education Code 29.053(b)*

Language  
Proficiency  
Assessment  
Committees  
(LPAC)

Each district that is required to offer bilingual and special language programs shall, by local board policy, establish an LPAC. A district shall establish and operate a sufficient number of LPACs to enable them to discharge their duties within four weeks of the enrollment of English learners. A district shall have on file policy and procedures for the selection, appointment, and training of members of the LPAC.

*Membership of  
LPAC*

The LPAC shall include:

1. An appropriately certified bilingual educator (for students served through a bilingual education program);
2. An appropriately certified English as a second language (ESL) educator (for students served through an ESL program);
3. A parent of an English learner participating in a bilingual or ESL program; and
4. A campus administrator.

A district may add other trained members to the committee.

No parent serving on the LPAC shall be an employee of the school district.

All members of the LPAC, including parents, shall be acting for the district and shall observe all laws and rules governing confidentiality of information concerning individual students. A district shall be

responsible for the orientation and training of all members, including the parents, of the LPAC.

*Education Code 29.063(a), (b); 19 TAC 89.1220(a)–(f)*

*Duties*

The LPAC shall have the duties set forth at Education Code 29.063(c) and 19 Administrative Code 89.1220(g)–(i), (k), including duties to review information, classify students, notify parents, and monitor student academic progress.

Home Language  
Survey

A district shall administer only one home language survey to each new student enrolling for the first time in a Texas public school in any grade from prekindergarten through grade 12. The district 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 through 12.

It is the 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.

The home language survey shall be provided in English, Spanish, and Vietnamese. For students of other language groups, the home language survey shall be translated into the primary language whenever possible.

The home language survey shall elicit one language answer to each of the following questions:

1. "What language is used in the child's home most of the time?"
2. "What language does the child use most of the time?"

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 19 Administrative Code 89.1226 (Testing and Classification of Students).

*19 TAC 89.1215(a)–(c), .1226*

Emergent Bilingual  
Classification

The LPAC may classify a student as emergent bilingual if:

1. The student's ability in English is so limited or the student's disabilities are so severe that assessment procedures cannot be administered;
2. The student's score or relative degree of achievement on the TEA-approved English proficiency test is below the levels established by TEA as indicative of reasonable proficiency;

3. The student's primary language proficiency score as measured by a TEA-approved test is greater than the student's proficiency in English; or
4. The LPAC determines, based on other information, including a teacher evaluation, parental viewpoint, or student interview, that the student's primary language proficiency is greater than the student's proficiency in English or that the student is not reasonably proficient in English.

*Education Code 29.056(c)*

Parental Notice and  
Consent

Not later than the tenth day after the date of the student's classification as emergent bilingual, the LPAC shall give written notice to the student's parent. *Education Code 29.056(d)*

The district shall notify the parent in English and in the parent's primary language that their child has been classified as an English learner and recommended for placement in the required bilingual education or ESL program. The district shall comply with the parent notification requirements described by 19 Administrative Code 89.1240(a).

The entry or placement of a student in the bilingual education or ESL program must be approved in writing by the student's parent in order to have the student included in the bilingual education allotment. 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 19 Administrative Code 89.1226(i) (Testing and Classification of Students), the student graduates from high school, or a change occurs in program placement.

*19 TAC 89.1240(a); Education Code 29.056(a)*

Pending parental approval of an English learner's entry into a bilingual program recommended by the LPAC, a district shall place the student in the recommended program. Only English learners with parent approval who are receiving services will be included in the bilingual education allotment.

A district may place or exit a student in 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 email that is documented in writing and retained; or

3. An adult who the 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.

*19 TAC 89.1220(j), (m)*

Participation of  
Other Students

With the approval of a district and a student's parents, a student who is not LEP may also participate in a bilingual education program. *Education Code 29.058*

The number of participating English proficient students shall not exceed 40 percent of the number of students enrolled in the program district-wide. *19 TAC 89.1233(c)*

Students with  
Disabilities

Districts shall implement assessment procedures that differentiate between language proficiency and disabling conditions in accordance with 19 Administrative Code Chapter 89, Subchapter AA. The district shall establish placement procedures that ensure that placement in a bilingual education or ESL program is not refused solely because the student has a disability. LPAC members shall meet in conjunction with admission, review, and dismissal (ARD) committee members to review and provide recommendations about the education needs of each English learner who qualifies for services in the special education program. [See EHBAB] *19 TAC 89.1230*

### **Bilingual and ESL Programs**

Each district with an enrollment of 20 or more emergent bilingual students in any language classification in the same grade level shall offer a bilingual education or special language program.

Each district that is required to offer bilingual education and special language programs under this section shall offer the following for emergent bilingual students:

1. Bilingual education in kindergarten through the elementary grades;
2. Bilingual education, instruction in English as a second language, or other transitional language instruction approved by the agency in post-elementary grades through grade 8; and
3. Instruction in English as a second language in grades 9 through 12.

*Education Code 29.053(c)–(d); 19 TAC 89.1205*

The district shall provide an ESL program to all English learners for whom a district is not required to offer a bilingual education pro-

gram, 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 to provide a bilingual education program that is not required by law [see below]. *19 TAC 89.1205(c)*

A district is authorized to establish a bilingual education program even if the district has fewer than 20 English learners in any language classification in the same grade level district-wide and are not required to do so under the law. A district is also authorized to establish bilingual education programs at grade levels at which the district is not required under the law to establish bilingual programs. If a district does operate such a program under this authorization, the district shall adhere to all program requirements in 19 Administrative Code 89.1210, .1227, .1228, and .1229. *19 TAC 89.1205(f)–(g)*

Exceptions and  
Waivers

A district shall comply with the requirements for bilingual education exceptions and ESL waivers under 19 Administrative Code 89.1207. *Education Code 29.054; 19 TAC 89.1207*

A district that is unable to employ a sufficient number of teachers, including part-time teachers, who meet the certification requirements for bilingual education and ESL program shall apply for an exception or waiver to the certification requirement on or before November 1. *19 TAC 89.1245(b)*

Program Design

A district that is required to offer a bilingual education or ESL program shall provide each English learner the opportunity to be enrolled in the required program at his or her grade level.

A district's bilingual education program shall comply with the program content and design requirements of 19 Administrative Code 89.1210. A district shall provide for ongoing coordination between the ESL program and the regular educational program.

*19 TAC 89.1210*

English learners shall participate with their English-speaking peers in general education classes provided in subjects such as art, music, and physical education. A district shall provide students enrolled in the program a meaningful opportunity to participate fully with other students in all extracurricular activities. Elective courses included in the curriculum may be taught in a language other than English. *Education Code 29.055, .057(b); 19 TAC 89.1210(f)*

*Bilingual  
Education  
Program Models*

The bilingual education program shall be implemented through at least one of the following program models:

1. Transitional bilingual/early exit;

2. Transitional bilingual/late exit;
3. Dual language immersion/one-way; or
4. Dual language immersion/two-way.

*19 TAC 89.1210(c)*

*ESL Program  
Models*

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 English learners through English instruction by a teacher appropriately certified in ESL under Education Code 29.061(c), through English language arts and reading, mathematics, science, and social studies. The goal of content-based ESL is for English learners to attain full proficiency in English in order to participate equitably in school. This model targets English language development through academic content instruction that is linguistically and culturally responsive in English language arts and reading, mathematics, science, and social studies.
2. An ESL/pull-out program model is an English acquisition program that serves students identified as English learners through English instruction provided by an appropriately certified ESL teacher under Education Code 29.061(c), through English language arts and reading. The goal of ESL pull-out is for English learners to attain full proficiency in English in order to participate equitably in school. This model targets English language development through academic content instruction that is linguistically and culturally responsive in English language arts and reading. Instruction shall be provided by the ESL teacher in a pull-out or inclusionary delivery model.

*19 TAC 89.1210(d)*

*Dual Language  
Immersion Program*

A district may adopt a dual language immersion program (DLIP) for students enrolled in elementary school grades. *Education Code 28.005(c), .0051(c)*

*Implementation*

Program implementation shall:

1. Begin at prekindergarten or kindergarten, as applicable;
2. Continue without interruption incrementally through the elementary grades; and
3. Consider expansion to middle school and high school whenever possible.

*19 TAC 89.1227(e)*

*Minimum  
Requirements*

A DLIP shall:

1. Address all curriculum requirements specified at 19 Administrative Code Chapter 74, Subchapter A (Required Curriculum) to include foundation and enrichment areas, English language proficiency standards, and college and career readiness standards.
2. Be a full-time program of academic instruction in English and another language.
3. Provide equitable resources in English and the additional program language whenever possible.
4. Provide a minimum of 50 percent of instructional time in the language other than English for the duration of the program.
5. Be developmentally appropriate and based on current best practices identified in research.

*19 TAC 89.1227*

*Two-Way DLIP  
Enrollment*

Student enrollment in a two-way DLIP is optional for English proficient students. The program 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. A district must obtain written parental approval for English proficient students through a district-developed process.

A district implementing a two-way DLIP shall develop a policy on enrollment and continuation for students in the program. The policy must address:

1. Eligibility criteria;
2. Program purpose;
3. The district's commitment to providing equitable access to services for English learners.
4. Grade levels in which the program will be implemented;
5. Support of program goals as stated in 19 Administrative Code 89.1210 (Program Content and Design); and
6. Expectations for students and parents.

*19 TAC 89.1228(c)*

*Two-Way DLIP  
State  
Assessment*

A district implementing a two-way DLIP shall determine the appropriate assessment option for program participants as follows:

1. For English learners, the LPAC shall convene before the administration of the state criterion-referenced test each year to determine the appropriate assessment option for each English learner in accordance with 19 Administrative Code 89.1220(i) (Language Proficiency Assessment Committee).
2. For English proficient students, the appropriate assessment option for the administration of the state criterion-referenced test each year is determined through a district-developed process.

*19 TAC 89.1228(e)*

*School District  
Recognition*

A district may recognize one or more of its schools that implement an exceptional DLIP if the school meets all of the following criteria:

1. The school must meet the minimum requirements stated in 19 Administrative Code 89.1227.
2. The school must receive an acceptable performance rating in the state accountability system.

The school must not be identified for any stage of intervention for the district's bilingual and/or ESL program under the performance-based monitoring system.

*Student  
Recognition*

A student participating in a DLIP or any other state-approved bilingual or ESL program may be recognized by the program and the board by earning a performance acknowledgement in accordance with 19 Administrative Code 74.14. [See EIF]

*19 TAC 89.1229*

Facilities

Bilingual education and ESL programs shall be located in public schools of the district with equitable access to all educational resources rather than in separate facilities. A district may concentrate the programs at a limited number of facilities within the district. Recent immigrant English learners shall not remain enrolled in a newcomer center for longer than two years. *Education Code 29.057; 19 TAC 89.1235*

Cooperation Among  
Districts

A district may join with one or more other districts to provide the required bilingual education or special language programs. The availability of the programs shall be publicized throughout the districts involved.

A district may allow a nonresident emergent bilingual student to enroll in or attend its bilingual education or special language pro-

grams if the student's district of residence does not provide an appropriate program. The tuition for the student shall be paid by the district in which the student resides.

*Education Code 29.059; 19 TAC 89.1205(e)*

Documentation

A student's permanent record shall contain the documentation items required by 19 Administrative Code 89.1220(l). Documentation in a student's permanent record shall be forwarded in the same manner as other student records to another school district in which the student enrolls. *19 TAC 89.1220(l)*

For students previously enrolled in a Texas public school, the receiving district shall secure the student records, including the home language survey and LPAC documentation as described in 19 Administrative Code 89.1220(l), as applicable. All attempts to contact the sending district to request records shall be documented. Multiple attempts to obtain the student's home language survey shall be made. *19 TAC 89.1215(d)*

Summer Program

If a district is required to offer a bilingual education or special language program, it shall offer a voluntary summer school program for emergent bilingual children who will be eligible for admission to kindergarten or first grade at the beginning of the next school year.

A school that operates on a semester system shall offer the program during the period school is recessed for the summer and for one-half day for eight weeks or on a similar schedule approved by the board. A school that operates on any other system shall offer 120 hours of instruction on a schedule established by the board.

The program must be an intensive bilingual education or special language program that meets the standards set by TEA, and the student/teacher ratio may not exceed 18:1. A district shall comply with the requirements of 19 Administrative Code 89.1250 in providing such a program.

Other Programs

A district may establish on a full- or part-time basis other summer school, extended day, or extended week bilingual or special language programs for emergent bilingual students and may join with other districts in establishing such programs.

The programs required or authorized by Education Code 29.060 may not be a substitute for programs required to be provided during the regular school year.

*Education Code 29.060*

**Personnel**

Teachers assigned to a bilingual education program using one of the following program models must be appropriately certified in bilingual education:

1. Transitional bilingual/early exit program model; or
2. Transitional bilingual/late exit program model.

*Education Code 29.061(b)*

Teachers assigned to a bilingual education program using a dual language immersion/one-way or two-way program model must be appropriately certified for:

1. Bilingual education for the component of the program provided in a language other than English; and
2. Bilingual education or English as a second language for the component of the program provided in English.

A district that provides a bilingual education program using a dual language immersion/one-way or two-way program model may assign a teacher certified for the language other than English component of the program and a different teacher certified for the English language component.

*Education Code 29.061(b-1)–(b-2)*

Teachers assigned to ESL programs must be appropriately certified for ESL. *Education Code 29.061(c)*

A district that is unable to hire a sufficient number of teachers with bilingual teaching or ESL certificates may request the activation of the appropriate permits in accordance with 19 Administrative Code Chapter 230. A district that is unable to provide the required bilingual education program because of an insufficient number of appropriately certified teachers shall request from the commissioner an exception to the bilingual education program and the approval of an alternative language program. English learners with parental approval for program services under a bilingual education exception will be included in the bilingual education allotment designated for an alternative language program. [See Exceptions and Waivers, above] *19 TAC 89.1207(a)–(b), .1245(a); Education Code 29.054*

**Emergent Bilingual Students and State Assessments**

In kindergarten–grade 12, an emergent bilingual student shall participate in the state assessment in accordance with commissioner's rules at 19 Administrative Code Chapter 101, Subchapter AA. [See EKBA]

**Program Exit**

A district may transfer an emergent bilingual student out of a bilingual education or special language program for the first time or a

subsequent time if the student is able to participate equally in a regular all-English instructional program as determined by:

1. TEA-approved tests administered at the end of each school year to determine the extent to which the student has developed oral and written language proficiency and specific language skills in English;
2. Satisfactory performance on the reading assessment instrument under Education Code 39.023(a) or an English language arts assessment instrument under Education Code 39.023(c), as applicable, with the assessment instrument administered in English, or, if the student is enrolled in the first or second grade, an achievement score at or above the 40th percentile in the reading and language arts sections of an English standardized test approved by TEA; and
3. TEA-approved criterion-referenced tests and the results of a subjective teacher evaluation.

*Education Code 29.056(g)*

Notice to Parents

A district shall give written notification to the student's parent of a student's reclassification as English proficient and his or her exit from the bilingual or ESL program and acquire written approval. Students meeting reclassification requirements may continue in the bilingual education or ESL program with parental approval. *19 TAC 89.1240(b)*

Post-Exit Monitoring  
and Reenrollment

The language proficiency assessment committee may reenroll the student in the program if later evidence suggests that a student who has been transferred out of a bilingual education or special language program has inadequate English proficiency and achievement. Classification of students for reenrollment must be based on the criteria required by Education Code 29.056. *Education Code 29.056(h)*

The LPAC shall reevaluate a student who is transferred out of a bilingual education or special language program if the student earns a failing grade in a subject in the foundation curriculum during any grading period in the first two school years after the student is transferred to determine whether the student should be reenrolled in a bilingual education or special language program.

During the first two school years after a student is transferred out of a bilingual education or special language program, the LPAC shall review the student's performance and consider:

1. The total amount of time the student was enrolled in bilingual education or special language programs;

2. The student's grades each grading period in each subject in the foundation curriculum;
3. The student's performance on state assessment instruments;
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 Education Code Chapter 37, Subchapter A.

After the evaluation, the LPAC may require intensive instruction for the student or reenroll the student in a bilingual education or special language program.

*Education Code 29.0561*

**Program Evaluation**

A district that is required to conduct a bilingual education or ESL program shall conduct an evaluation in accordance with 19 Administrative Code 89.1265. The annual evaluation report shall be presented to the board before November 1 of each year.

A district shall report to parents the progress of their child in acquiring English as a result of participation in the program offered to English learners.

Each school year, the principal of each campus, with assistance from the campus level committee, shall develop, review, and revise the campus improvement plan for the purposes of improving student performance for English learners. [See BQB]

*19 TAC 89.1265*