

Chapter 101. Assessment

Subchapter AA. Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments

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

§101.1001. Reading Proficiency Tests in English.

In Grades 3-12, a limited English proficient (LEP) student, as defined by the Texas Education Code, Chapter 29, Subchapter B, shall take the reading proficiency tests in English annually until the student has achieved a rating of advanced. A LEP student who has achieved a rating of advanced is not eligible for a LEP exemption from the assessment of academic skills or the alternative assessment of academic skills in subsequent years.

Source: The provisions of this §101.1001 adopted to be effective September 30, 2001, 26 TexReg 7270.

§101.1003. Role of the Language Proficiency Assessment Committee.

In accordance with the Texas Education Code, §39.023(a), (l), and (m), the language proficiency assessment committee (LPAC) shall select the appropriate assessment option for each limited English proficient student as outlined in §101.1005 of this title (relating to Limited English Proficient Students at the Exit Level) and §101.1007 of this title (relating to Limited English Proficient Students at Grades Other Than the Exit Level). Assessment decisions must be made on an individual student basis and in accordance with administrative procedure established by the Texas Education Agency. The LPAC must document in the student's permanent record file the reason for the postponement authorized in §101.1005 or for the exemption authorized in §101.1007. A school district shall make a reasonable effort to determine a student's previous testing history.

Source: The provisions of this §101.1003 adopted to be effective September 30, 2001, 26 TexReg 7270.

§101.1005. Limited English Proficient Students at the Exit Level.

Limited English proficient (LEP) students are not eligible for an exemption from the exit level assessment of academic skills or the end-of-course tests on the basis of limited English proficiency. However, LEP students who are recent immigrants may postpone only one time the initial administration of the exit level test and end-of-course test. The term "recent immigrant" in this section is defined as an immigrant who first enrolls in U.S. schools no more than 12 months before the administration of the test from which the postponement is sought.

Source: The provisions of this §101.1005 adopted to be effective September 30, 2001, 26 TexReg 7270.

§101.1007. Limited English Proficient Students at Grades Other Than the Exit Level.

- (a) In Grades 3-6, the language proficiency assessment committee (LPAC) shall determine whether a limited English proficient (LEP) student is administered the assessment of academic skills in English or in Spanish. A LEP student may be administered a Spanish version of the assessment of academic skills for a maximum of three years. If the LEP student is an immigrant, the number of LEP exemptions and administrations of the assessment in Spanish must not exceed three.
- (b) In accordance with paragraphs (1)-(3) of this subsection, certain immigrant LEP students who have not yet achieved a rating of advanced on the reading proficiency tests in English may be eligible for an exemption from the assessment of academic skills during a period not to exceed their first three school years of enrollment in U.S. schools. The term "immigrant" in this subchapter is defined as a student who has resided outside the 50 U.S. states for at least two consecutive years.

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- (1) During the first school year of enrollment in a U.S. school, the immigrant student may be granted a LEP exemption if the LPAC determines that the student has not had the prior schooling necessary to provide the foundation of learning that Texas schools require and measure on the assessment, whether the foundation be in knowledge of the English language or specific academic skills and concepts in the subjects assessed.
- (2) During the second and third school year of enrollment in a U.S. school, the immigrant student for whom a primary language assessment is not available may be granted an exemption if the LPAC determines that the student lacks the academic language proficiency in English necessary for an assessment of academic skills in English to measure the student's academic progress in a valid, reliable manner.
- (3) During the second and third school year of enrollment in a U.S. school, the immigrant student for whom a Spanish-version assessment is available must take the assessment in either English or Spanish unless:
 - (A) the student is in an English as a second language (ESL) program, which does not call for instruction in Spanish, and the LPAC determines that the student lacks the language proficiency in English and the academic instruction in Spanish and/or literacy in Spanish for the assessment in either English or Spanish to measure the student's academic progress in a valid, reliable manner; or
 - (B) the student is in a bilingual education program and the LPAC has documentation, including signed verification by the parent or guardian whenever possible, that there was an extensive period of time outside the U.S. in which the student did not attend school and that this absence of schooling resulted in such limited academic achievement and/or literacy that assessment in either English or Spanish is inappropriate as a measure for school accountability.
- (c) A LEP student whose parent or guardian has declined the services required by the Texas Education Code, Chapter 29, Subchapter B, shall take the assessment of academic skills in English. The student shall also take the reading proficiency tests in English until the student has achieved a rating of advanced.
- (d) School districts may administer the assessment of academic skills in Spanish to a student who is not identified as limited English proficient but who participates in a two-way bilingual program if the LPAC determines the assessment in Spanish to be the most appropriate measure of the student's academic progress. However, the student may not be administered the Spanish-version assessment for longer than three years.

Source: The provisions of this §101.1007 adopted to be effective September 30, 2001, 26 TexReg 7270.

§101.1009. Limited English Proficient Students Who Receive Special Education Services.

- (a) The provisions of this subchapter apply to limited English proficient (LEP) students who receive special education services except as otherwise specified in this section.
- (b) Decisions regarding the selection of assessments for LEP students who receive special education services shall be made by the admission, review, and dismissal (ARD) committee, which includes a language proficiency assessment committee (LPAC) member to ensure that issues related to the student's language proficiency are duly considered.
- (c) A LEP student who receives special education services may be exempted from the reading proficiency tests in English only if the ARD committee determines that these tests cannot provide a meaningful measure of the student's annual growth in English reading proficiency for reasons associated with the student's disability.
- (d) The provisions of §101.1007(b)(1) and (2) of this title (relating to Limited English Proficient Students at Grades Other Than the Exit Level) apply to the alternative assessment of academic skills, which is a measure of annual progress rather than grade-level mastery.

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- (e) A LEP student who receives special education services and whose parent or guardian has declined the services required by the Texas Education Code, Chapter 29, Subchapter B, is not eligible for an exemption on the basis of limited English proficiency.

Source: The provisions of this §101.1009 adopted to be effective September 30, 2001, 26 TexReg 7270.

§101.1011. Clarification of Provisions.

The provisions of this subchapter shall supersede any provisions concerning participation of limited English proficient students in state assessments found in Chapter 89, Subchapter BB, of this title (relating to Adaptations for Special Populations) and this chapter to the extent that inconsistent provisions exist.

Source: The provisions of this §101.1011 adopted to be effective September 30, 2001, 26 TexReg 7270.