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THE RIGHTS OF IMMIGRANT STUDENTS AND ENGLISH LEARNERS IN THE TEXAS PUBLIC SCHOOLS

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- I. Overview of the issue/Demographic changes
- II. Right to attend free public school: Plyler v. Doe
- III. Social Security Numbers: Privacy Act of 1974
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SCHOOL OPENING ALERT

The U.S. Supreme Court has ruled in *Plyler v. Doe* [457 U.S. 202 (1982)] that undocumented children and young adults have the same right to attend public primary and secondary schools as do U.S. citizens and permanent residents. Like other children, undocumented students are obliged under state law to attend school until they reach a mandated age.

As a result of the *Plyler* ruling, public schools may not:

- ✦ Deny admission to a student during initial enrollment or at any other time on the basis of undocumented status.
- ✦ Treat a student disparately to determine residency.
- ✦ Engage in any practices to "chill" the right of access to school.
- ✦ Require students or parents to disclose or document their immigration status.
- ✦ Make inquiries of students or parents that may expose their undocumented status.
- ✦ Require social security numbers from all students, as this may expose undocumented status.

Students without social security numbers should be assigned a number generated by the school. Adults without social security numbers who are applying for a free lunch and/or breakfast program on behalf of a student need only indicate on the application that they do not have a social security number.

LLAMADA URGENTE

En 1982, El Tribunal Supremo de los Estados Unidos decidió en el caso titulado *Plyler v Doe* [457 U.S. 202] que los niños y los jóvenes indocumentados tienen el mismo derecho a las escuelas públicas de primaria y secundaria que el que tienen sus contrapartes de nacionalidad estadounidense. Al igual que los demás niños, los estudiantes indocumentados están obligados a asistir a la escuela hasta que lleguen a la edad escolar requerida por la ley.

Bajo la decisión *Plyler*, las escuelas públicas no pueden:

- ✦ negarles admisión a la escuela a estudiantes indocumentados basado en su estado de ser indocumentados, ya sea al momento de la matrícula o en cualquier otro momento.
- ✦ tratar a un estudiante en forma desigual o discriminatoria para determinar su situación legal y/o de residencia.
- ✦ tomar medidas o reclamos que pudieran atemorizar a la comunidad indocumentada, con el resultado de que ellos no acudan a su derecho de acceso a las escuelas públicas.
- ✦ requerir que un estudiante o sus padres revelen o documenten su situación legal y/o inmigratoria.
- ✦ investigar la situación legal y/o inmigratoria de un estudiante o de sus padres, aún cuando sólo sea por razones educativas, ya que esto puede poner en evidencia dicha situación.
- ✦ exigir que un estudiante obtenga un número de seguro social como pre-requisito de matrícula a un programa escolar.

La escuela debe de asignar un número de identificación a los estudiantes que no tienen tarjeta de seguro social. Los adultos sin tarjeta de seguro social aplicando para el programa de almuerzo y/o desayuno gratis para sus hijos sólo necesitan indicar en la solicitud que no tiene un número de seguro social.



EDUCATION CODE
TITLE 2. PUBLIC EDUCATION
SUBTITLE E. STUDENTS AND PARENTS
CHAPTER 25. ADMISSION, TRANSFER, AND ATTENDANCE
SUBCHAPTER A. ADMISSION AND ENROLLMENT

§ 25.001 – Admission

(a) A person who, on the first day of September of any school year, is at least five years of age and under 21 years of age, or is at least 21 years of age and under 26 years of age and is admitted by a school district to complete the requirements for a high school diploma is entitled to the benefits of the available school fund for that year. Any other person enrolled in a prekindergarten class under Section 29.153 is entitled to the benefits of the available school fund.

(b) The board of trustees of a school district or its designee shall admit into the public schools of the district free of tuition a person who is over five and younger than 21 years of age on the first day of September of the school year in which admission is sought, and may admit a person who is at least 21 years of age and under 26 years of age for the purpose of completing the requirements for a high school diploma, if:

- (1) the person and either parent of the person reside in the school district;
- (2) the person does not reside in the school district but a parent of the person resides in the school district and that parent is a joint managing conservator or the sole managing conservator or possessory conservator of the person;
- (3) the person and the person's guardian or other person having lawful control of the person under a court order reside within the school district;
- (4) the person has established a separate residence under Subsection (d);
- (5) the person is homeless, regardless of the residence of the person, of either parent of the person, or of the person's guardian or other person having lawful control of the person;
- (6) the person is a foreign exchange student placed with a host family that resides in the school district by a nationally recognized foreign exchange program, unless the school

district has applied for and been granted a waiver by the commissioner under Subsection (e);

(7) the person resides at a residential facility located in the district;

(8) the person resides in the school district and is 18 years of age or older or the person's disabilities of minority have been removed;

(9) the person does not reside in the school district but the grandparent of the person:

(A) resides in the school district; and

(B) provides a substantial amount of after-school care for the person as determined by the board; or

(10) the person and either parent of the person reside in a residence homestead, as defined by Section 11.13(j), Tax Code, that is located on a parcel of property any part of which is located in the school district.

(b-1) A person who is 21 years of age or older and is admitted by a school district for the purpose stated in Subsection (b) is not eligible for placement in a disciplinary alternative education program or a juvenile justice alternative education program if the person engages in conduct that would require or authorize such placement for a student under the age of 21. If the student engages in conduct that would otherwise require such placement, the district shall revoke admission of the student into the public schools of the district.

(b-2) A person who is 21 years of age or older who is admitted by a school district to complete the requirements for a high school diploma and who has not attended school in the three preceding school years may not be placed with a student who is 18 years of age or younger in a classroom setting, a cafeteria, or another district-sanctioned school activity. Nothing in this subsection prevents a student described by this subsection from attending a school-sponsored event that is open to the public as a member of the public.

(c) The board of trustees of a school district or the board's designee may require evidence that a person is eligible to attend the public schools of the district at the time the board or its designee considers an application for admission of the person. The board of trustees or its designee shall establish minimum proof of residency acceptable to the district. The board of trustees or its designee may make reasonable inquiries to verify a person's eligibility for admission.

(c-1) A person whose parent or guardian is an active-duty member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, may establish residency for purposes of Subsection (b) by providing to the school district a copy

of a military order requiring the parent's or guardian's transfer to a military installation in or adjacent to the district's attendance zone.

(c-2) A person who establishes residency as provided by Subsection (c-1) shall provide to the school district proof of residence in the district's attendance zone not later than the 90th day after the arrival date specified in the order described by that subsection. For purposes of this subsection, "residence" includes residence in a military temporary lodging facility.

(d) For a person under the age of 18 years to establish a residence for the purpose of attending the public schools separate and apart from the person's parent, guardian, or other person having lawful control of the person under a court order, it must be established that the person's presence in the school district is not for the primary purpose of participation in extracurricular activities. The board of trustees shall determine whether an applicant for admission is a resident of the school district for purposes of attending the public schools and may adopt reasonable guidelines for making a determination as necessary to protect the best interests of students. The board of trustees is not required to admit a person under this subsection if the person:

(1) has engaged in conduct or misbehavior within the preceding year that has resulted in:

(A) removal to a disciplinary alternative education program; or

(B) expulsion;

(2) has engaged in delinquent conduct or conduct in need of supervision and is on probation or other conditional release for that conduct; or

(3) has been convicted of a criminal offense and is on probation or other conditional release.

(e) A school district may request that the commissioner waive the requirement that the district admit a foreign exchange student who meets the conditions of Subsection (b)(6). The commissioner shall respond to a district's request not later than the 60th day after the date of receipt of the request. The commissioner shall grant the request and issue a waiver effective for a period not to exceed three years if the commissioner determines that admission of a foreign exchange student would:

(1) create a financial or staffing hardship for the district;

(2) diminish the district's ability to provide high quality educational services for the district's domestic students; or

(3) require domestic students to compete with foreign exchange students for educational resources.

(f) A child placed in foster care by an agency of the state or by a political subdivision shall be permitted to attend the public schools in the district in which the foster parents reside free of any charge to the foster parents or the agency. A durational residence requirement may not be used to prohibit that child from fully participating in any activity sponsored by the school district.

(g) A student who was enrolled in a primary or secondary public school before the student entered the conservatorship of the Department of Family and Protective Services and who is placed at a residence outside the attendance area for the school or outside the school district is entitled to continue to attend the school in which the student was enrolled immediately before entering conservatorship until the student successfully completes the highest grade level offered by the school at the time of placement without payment of tuition. The student is entitled to continue to attend the school regardless of whether the student remains in the conservatorship of the department for the duration of the student's enrollment in the school.

(g-1) If a student who is in the conservatorship of the department is enrolled in a primary or secondary public school, other than the school in which the student was enrolled at the time the student was placed in the conservatorship of the department, the student is entitled to continue to attend that school without payment of tuition until the student successfully completes the highest grade level offered by the school at the time of enrollment in the school, even if the child's placement is changed to a residence outside the attendance area for that school or outside the school district. The student is entitled to continue to attend the school regardless of whether the student remains in the conservatorship of the department for the duration of the student's enrollment in the school.

(h) In addition to the penalty provided by Section 37.10, Penal Code, a person who knowingly falsifies information on a form required for enrollment of a student in a school district is liable to the district if the student is not eligible for enrollment in the district but is enrolled on the basis of the false information. The person is liable, for the period during which the ineligible student is enrolled, for the greater of:

- (1) the maximum tuition fee the district may charge under Section 25.038; or
- (2) the amount the district has budgeted for each student as maintenance and operating expenses.

(i) A school district may include on an enrollment form notice of the penalties provided by Section 37.10, Penal Code, and of the liability provided by Subsection (h) for falsifying information on the form.

(j) For the purposes of this subchapter, the board of trustees of a school district by policy may allow a person showing evidence of legal responsibility for a child other than an order of a court

to substitute for a guardian or other person having lawful control of the child under an order of a court.

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1019, § 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 396, § 2.08, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1055, § 2, eff. June 20, 2003; Acts 2005, 79th Leg., ch. 164, § 2, eff. May 27, 2005; Acts 2005, 79th Leg., ch. 920, § 1, eff. June 18, 2005; Acts 2007, 80th Leg., ch. 850, § 1, eff. June 15, 2007; Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 4.002, eff. Sept. 1, 2013; Acts 2013, 83rd Leg., ch. 688 (H.B. 2619), § 9, eff. Sept. 1, 2013; Acts 2015, 84th Leg., ch. 142 (H.B. 4), § 3, eff. May 28, 2015; Acts 2015, 84th Leg., ch. 944 (S.B. 206), § 1, eff. Sept. 1, 2015; Acts 2019, 86th Leg., ch. 262 (H.B. 1597), § 1, eff. May 28, 2019; Acts 2019, 86th Leg., ch. 597 (S.B. 668), § 1.03, eff. June 10, 2019; Acts 2019, 86th Leg., ch. 823 (H.B. 2526), § 1, eff. June 10, 2019; Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 3.016, eff. Sept. 1, 2019; Acts 2023, 88th Leg., ch. 5 (S.B. 1008), § 1, eff. May 10, 2023.



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SUBTITLE E. STUDENTS AND PARENTS
CHAPTER 25. ADMISSION, TRANSFER, AND ATTENDANCE
SUBCHAPTER A. ADMISSION AND ENROLLMENT

§ 25.002 – Requirements for Enrollment

(a) If a parent or other person with legal control of a child under a court order enrolls the child in a public school, the parent or other person or the school district in which the child most recently attended school shall furnish to the school district:

- (1) the child's birth certificate or another document suitable as proof of the child's identity;
- (2) a copy of the child's records from the school the child most recently attended if the child has been previously enrolled in a school in this state or another state, including for a child who most recently attended a public school in this state, a copy of the child's disciplinary record and any threat assessment involving the child's behavior conducted under Section 37.115; and
- (3) a record showing that the child has the immunizations as required under Section 38.001, in the case of a child required under that section to be immunized, proof as required by that section showing that the child is not required to be immunized, or proof that the child is entitled to provisional admission under that section and under rules adopted under that section.

(a-1) Information a school district furnishes under Subsections (a)(1) and (2) must be furnished by the district not later than the 10th working day after the date a request for the information is received by the district. Information a parent or other person with legal control of a child under a court order furnishes under Subsections (a)(1) and (2) must be furnished by the parent or other person not later than the 30th day after the date a child is enrolled in a public school. If a parent or other person with legal control of a child under a court order requests that a district transfer a child's student records, the district to which the request is made shall notify the parent or other person as soon as practicable that the parent or other person may request and receive an unofficial copy of the records for delivery in person to a school in another district.

- (b) If a child is enrolled under a name other than the child's name as it appears in the identifying document or records, the school district shall notify the missing children and missing persons information clearinghouse of the child's name as shown on the identifying document or records and the name under which the child is enrolled. The information in the notice is confidential and may be released only to a law enforcement agency.
- (c) If the information required by Subsection (a) is not furnished to the district within the period provided by that subsection, the district shall notify the police department of the municipality or sheriff's department of the county in which the district is located and request a determination of whether the child has been reported as missing.
- (d) When accepting a child for enrollment, the school district shall inform the parent or other person enrolling the child that presenting a false document or false records under this section is an offense under Section 37.10, Penal Code, and that enrollment of the child under false documents subjects the person to liability for tuition or costs under Section 25.001(h).
- (e) A person commits an offense if the person enrolls a child in a public school and fails to furnish an identifying document or record relating to the child on the request of a law enforcement agency conducting an investigation in response to a notification under Subsection (c). An offense under this subsection is a Class B misdemeanor.
- (f) Except as otherwise provided by this subsection, for a child to be enrolled in a public school, the child must be enrolled by the child's parent or by the child's guardian or other person with legal control of the child under a court order. A school district shall record the name, address, and date of birth of the person enrolling a child.
- (g) A school district shall accept a child for enrollment in a public school without the documentation required by Subsection (a) if the Department of Protective and Regulatory Services has taken possession of the child under Chapter 262, Family Code. The Department of Protective and Regulatory Services shall ensure that the documentation required by Subsection (a) is furnished to the school district not later than the 30th day after the date the child is enrolled in the school.

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 575, § 34, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1514, § 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 234, § 2, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 164, § 3, eff. May 27, 2005; Acts 2023, 88th Leg., ch. 896 (H.B. 3), § 6, eff. Sept. 1, 2023.

THE TEXAS ADMINISTRATIVE CODE

TITLE 19. Education
PART 2. Texas Education Agency



CHAPTER 129. Student Attendance SUBCHAPTER A. Student Attendance Allowed

Statutory Authority: The provisions of this Chapter 129 issued under the Texas Education Code, §42.004, unless otherwise noted.

§129.1. FREE ATTENDANCE IN GENERAL.

(a) Definitions. Identification is required within 30 days of a child's enrollment in a Texas school, in accordance with the Texas Education Code, §25.002. For the purposes of identification, the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Documents that are suitable for identification - Shall be defined by the commissioner of education.

(2) The child's records - Include a minimum set of data and documentation established by the commissioner of education. The minimum set of data will include the child's social security number or a state-approved alternative identification number as assigned by the Public Education Information Management System (PEIMS).

(b) Children shall not be denied enrollment or be removed solely because they fail to meet the requirements of subsection (a) of this section.

(c) Students in this country under a bona fide exchange program are eligible to attend school in the designated district of residence.

Source: The provisions of this §129.1 adopted to be effective September 1, 1996, 21 TexReg 588.



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SUBCHAPTER C. OPERATION OF SCHOOLS AND SCHOOL ATTENDANCE

§25.085 – Compulsory School Attendance

- (a) A child who is required to attend school under this section shall attend school each school day for the entire period the program of instruction is provided.
- (b) Unless specifically exempted by Section 25.086, a child who is at least six years of age, or who is younger than six years of age and has previously been enrolled in first grade, and who has not yet reached the child's 19th birthday shall attend school.
- (c) On enrollment in prekindergarten or kindergarten, a child shall attend school.
- (d) Unless specifically exempted by Section 25.086, a student enrolled in a school district must attend:
- (1) an extended-year program for which the student is eligible that is provided by the district for students identified as likely not to be promoted to the next grade level or tutorial classes required by the district under Section 29.084;
 - (2) an accelerated reading instruction program to which the student is assigned under Section 28.006(g);
 - (3) an accelerated instruction program to which the student is assigned under Section 28.0211;
 - (4) a basic skills program to which the student is assigned under Section 29.086; or
 - (5) a summer program provided under Section 37.008(1) or Section 37.021.
- (e) A person who voluntarily enrolls in school or voluntarily attends school after the person's 19th birthday shall attend school each school day for the entire period the program of instruction is offered. A school district may revoke for the remainder of the school year the enrollment of a person who has more than five absences in a semester that are not excused under Section 25.087, except a school district may not revoke the enrollment of a person under this subsection on a day on which the person is physically present at school. A person whose enrollment is revoked under this subsection may be considered an unauthorized person on school district grounds for purposes of Section 37.107.

(f) The board of trustees of a school district may adopt a policy requiring a person described by Subsection (e) who is under 21 years of age to attend school until the end of the school year. Section 65.003(a), Family Code, does not apply to a person subject to a policy adopted under this subsection. Sections 25.093 and 25.095 do not apply to the parent of a person subject to a policy adopted under this subsection.

(g) After the third unexcused absence of a person described by Subsection (e), a school district shall issue a warning letter to the person that states the person's enrollment may be revoked for the remainder of the school year if the person has more than five unexcused absences in a semester.

(h) As an alternative to revoking a person's enrollment under Subsection (e), a school district may impose a behavior improvement plan described by Section 25.0915(a-1)(1).

(i) Notwithstanding any other provision of this section, a student enrolled in a school district is not required to attend school for any additional instructional days described by Section 48.0051.

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1019, § 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 396, § 2.10, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 711, § 1, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1055, § 3, eff. June 20, 2003; Acts 2007, 80th Leg., ch. 50, § 1, eff. May 10, 2007; Acts 2007, 80th Leg., ch. 850, § 2, eff. June 15, 2007; Acts 2015, 84th Leg., ch. 935 (H.B. 2398), § 7, eff. Sept. 1, 2015; Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 2.011, eff. Sept. 1, 2020.



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§ 25.086 – Exemptions

(a) A child is exempt from the requirements of compulsory school attendance if the child:

- (1) attends a private or parochial school that includes in its course a study of good citizenship;
- (2) is eligible to participate in a school district's special education program under Section 29.003 and cannot be appropriately served by the resident district;
- (3) has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible and holds a certificate from a qualified physician specifying the temporary condition, indicating the treatment prescribed to remedy the temporary condition, and covering the anticipated period of the child's absence from school for the purpose of receiving and recuperating from that remedial treatment;
- (4) is expelled in accordance with the requirements of law in a school district that does not participate in a mandatory juvenile justice alternative education program under Section 37.011;
- (5) is at least 17 years of age and:
 - (A) is attending a course of instruction to prepare for the high school equivalency examination, and:
 - (i) has the permission of the child's parent or guardian to attend the course;
 - (ii) is required by court order to attend the course;
 - (iii) has established a residence separate and apart from the child's parent, guardian, or other person having lawful control of the child; or
 - (iv) is homeless; or

- (B) has received a high school diploma or high school equivalency certificate;
- (6) is at least 16 years of age and is attending a course of instruction to prepare for the high school equivalency examination, if:
- (A) the child is recommended to take the course of instruction by a public agency that has supervision or custody of the child under a court order; or
 - (B) the child is enrolled in a Job Corps training program under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.);
- (7) is at least 16 years of age and is enrolled in a high school diploma program under Chapter 18;
- (8) is enrolled in the Texas Academy of Mathematics and Science under Subchapter G, Chapter 105;¹
- (9) is enrolled in the Texas Academy of Leadership in the Humanities;
- (10) is enrolled in the Texas Academy of Mathematics and Science at The University of Texas Rio Grande Valley;
- (11) is enrolled in the Texas Academy of International Studies; or
- (12) is specifically exempted under another law.

(b) This section does not relieve a school district in which a child eligible to participate in the district's special education program resides of its fiscal and administrative responsibilities under Subchapter A, Chapter 29,² or of its responsibility to provide a free appropriate public education to a child with a disability.

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, § 1, eff. June 19, 1997; Acts 1997, 75th Leg., ch. 1019, § 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1282, § 2, eff. June 18, 1999; Acts 2005, 79th Leg., ch. 377, § 3, eff. June 17, 2005; Acts 2005, 79th Leg., ch. 887, § 2, eff. June 17, 2005; Acts 2005, 79th Leg., ch. 1339, § 6, eff. June 18, 2005; Acts 2007, 80th Leg., ch. 921, § 4.003, eff. Sept. 1, 2007; Acts 2019, 86th Leg., ch. 597 (S.B. 668), § 1.04, eff. June 10, 2019; Acts 2021, 87th Leg., ch. 188 (S.B. 1467), § 1, eff. May 30, 2021.



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SUBCHAPTER C. OPERATION OF SCHOOLS AND SCHOOL ATTENDANCE

§ 25.093 – Parent Contributing to Nonattendance

(a) If a warning is issued as required by Section 25.095(a), the parent with criminal negligence fails to require the child to attend school as required by law, and the child has absences for the amount of time specified under Section 65.003(a), Family Code, the parent commits an offense.

(b) The attendance officer or other appropriate school official shall file a complaint against the parent in:

(1) the constitutional county court of the county in which the parent resides or in which the school is located, if the county has a population of 2.1 million or more;

(2) a justice court of any precinct in the county in which the parent resides or in which the school is located; or

(3) a municipal court of the municipality in which the parent resides or in which the school is located.

(c) An offense under Subsection (a) is a misdemeanor, punishable by fine only, in an amount not to exceed:

(1) \$100 for a first offense;

(2) \$200 for a second offense;

(3) \$300 for a third offense;

(4) \$400 for a fourth offense; or

(5) \$500 for a fifth or subsequent offense.

<Text of (c-1) effective until January 1, 2025>

(c-1) Each day the child remains out of school may constitute a separate offense. Two or more offenses under Subsection (a) may be consolidated and prosecuted in a single action. If the court orders deferred disposition under Article 45.051, Code of Criminal Procedure, the court may require the defendant to provide personal services to a charitable or educational institution as a condition of the deferral.

<Text of (c-1) effective January 1, 2025>

(c-1) Each day the child remains out of school may constitute a separate offense. Two or more offenses under Subsection (a) may be consolidated and prosecuted in a single action. If the court orders deferred disposition under Subchapter G, Chapter 45A , Code of Criminal Procedure, the court may require the defendant to provide personal services to a charitable or educational institution as a condition of the deferral.

(d) A fine collected under this section shall be deposited as follows:

(1) one-half shall be deposited to the credit of the operating fund of, as applicable:

(A) the school district in which the child attends school;

(B) the open-enrollment charter school the child attends; or

(C) the juvenile justice alternative education program that the child has been ordered to attend; and

(2) one-half shall be deposited to the credit of:

(A) the general fund of the county, if the complaint is filed in the justice court or the constitutional county court; or

(B) the general fund of the municipality, if the complaint is filed in municipal court.

(e) At the trial of any person charged with violating this section, the attendance records of the child may be presented in court by any authorized employee of the school district or open-enrollment charter school, as applicable.

(f) The court in which a conviction, deferred adjudication, or deferred disposition for an offense under Subsection (a) occurs may order the defendant to attend a program for parents of students with unexcused absences that provides instruction designed to assist those parents in identifying problems that contribute to the students' unexcused absences and in developing strategies for resolving those problems if a program is available.

(g) If a parent refuses to obey a court order entered under this section, the court may punish the parent for contempt of court under Section 21.002, Government Code.

(h) It is an affirmative defense to prosecution for an offense under Subsection (a) that one or more of the absences required to be proven under Subsection (a) was excused by a school official or should be excused by the court. The burden is on the defendant to show by a preponderance of the evidence that the absence has been or should be excused. A decision by the court to excuse an absence for purposes of this section does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

(i) In this section, “parent” includes a person standing in parental relation.

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 865, § 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1403, § 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1504, § 24, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1514, § 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 137, §§ 4, 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 283, § 38, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, § 6.001, eff. Sept. 1, 2003; Acts 2011, 82nd Leg., ch. 148 (H.B. 734), § 1, eff. Sept. 1, 2011; Acts 2015, 84th Leg., ch. 935 (H.B. 2398), § 11, eff. Sept. 1, 2015; Acts 2023, 88th Leg., ch. 644 (H.B. 4559), § 18, eff. Sept. 1, 2023; Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 2.037, eff. Jan. 1, 2025.



EDUCATION CODE

TITLE 2. PUBLIC EDUCATION
SUBTITLE E. CURRICULUM, PROGRAMS, AND SERVICES
CHAPTER 26. PARENTAL RIGHTS AND RESPONSIBILITIES

CHAPTER 26. PARENTAL RIGHTS AND RESPONSIBILITIES

Sec. 26.001.

PURPOSE. (a) Parents are partners with educators, administrators, and school district boards of trustees in their children's education. Parents shall be encouraged to actively participate in creating and implementing educational programs for their children.

(b) The rights listed in this chapter are not exclusive. This chapter does not limit a parent's rights under other law.

(c) Unless otherwise provided by law, a board of trustees, administrator, educator, or other person may not limit parental rights. EDUCATION CODE Statute text rendered on: 6/20/2018 - 480 -

(d) Each board of trustees shall provide for procedures to consider complaints that a parent's right has been denied.

(e) Each board of trustees shall cooperate in the establishment of ongoing operations of at least one parent-teacher organization at each school in the district to promote parental involvement in school activities.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.



EDUCATION CODE

TITLE 2. PUBLIC EDUCATION
SUBTITLE E. CURRICULUM, PROGRAMS, AND SERVICES
CHAPTER 26. PARENTAL RIGHTS AND RESPONSIBILITIES

CHAPTER 26. PARENTAL RIGHTS AND RESPONSIBILITIES

Sec. 26.002. DEFINITION

In this chapter, "parent" includes a person standing in parental relation. The term does not include a person as to whom the parent-child relationship has been terminated or a person not entitled to possession of or access to a child under a court order. Except as provided by federal law, all rights of a parent under Title 2 of this code and all educational rights under Section 151.001(a)(10), Family Code, shall be exercised by a student who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by Acts 2001, 77th Leg., ch. 767, Sec. 10, eff. June 13, 2001. Amended by: Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 6.002, eff. September 1, 2017.



EDUCATION CODE
TITLE 2. PUBLIC EDUCATION
SUBTITLE G. CURRICULUM, PROGRAMS, AND SERVICES
CHAPTER 38. HEALTH AND SAFETY
SUBCHAPTER A. GENERAL PROVISIONS

§38.001 – Immunization; Requirements; Exceptions

(a) Each student shall be fully immunized against diphtheria, rubeola, rubella, mumps, tetanus, and poliomyelitis, except as provided by Subsection (c).

(b) Subject to Subsections (b-1) and (c), the executive commissioner of the Health and Human Services Commission may modify or delete any of the immunizations in Subsection (a) or may require immunizations against additional diseases as a requirement for admission to any elementary or secondary school.

(b) Subject to Subsection (c), the Department of State Health Services may modify or delete any of the immunizations in Subsection (a) or may require immunizations against additional diseases as a requirement for admission to any elementary or secondary school.

(b-1) Each year, the Department of State Health Services shall prepare a list of the immunizations required under this section for admission to public schools and of any additional immunizations the department recommends for school-age children. The department shall prepare the list in English and Spanish and make the list available in a manner that permits a school district to easily post the list on the district's Internet website as required by Section 38.019.

(c) Immunization is not required for a person's admission to any elementary or secondary school if the person applying for admission:

(1) submits to the admitting official:

(A) an affidavit or a certificate signed by a physician who is duly registered and licensed to practice medicine in the United States, in which it is stated that, in the physician's opinion, the immunization required poses a significant risk to the health and well-being of the applicant or any member of the applicant's family or household; or

(B) an affidavit signed by the applicant or, if a minor, by the applicant's parent or guardian stating that the applicant declines immunization for reasons of conscience, including a religious belief; or

(2) is a member of the armed forces of the United States and is on active duty.

(c-1) An affidavit submitted under Section (c)(1)(B) must be on a form described by Section 161.0041, Health and Safety Code, and must be submitted to the admitting official not later than the 90th day after the date the affidavit is notarized.

(d) The Department of State Health Services shall provide the required immunization to children in areas where no local provision exists to provide those services.

(e) A person may be provisionally admitted to an elementary or secondary school if the person has begun the required immunizations and if the person continues to receive the necessary immunizations as rapidly as is medically feasible. The Department of State Health Services shall adopt rules relating to the provisional admission of persons to an elementary or secondary school.

(f) A person who has not received the immunizations required by this section for reasons of conscience, including because of the person's religious beliefs, may be excluded from school in times of emergency or epidemic declared by the commissioner of public health.

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 2003, 78th Leg., ch. 198, § 2.160, eff. Sept. 1, 2003; Acts 2007, 80th Leg., ch. 43, § 1, eff. May 8, 2007; Acts 2007, 80th Leg., ch. 94, § 2, eff. May 15, 2007.



EDUCATION CODE
TITLE 2. PUBLIC EDUCATION
SUBTITLE G. CURRICULUM, PROGRAMS, AND SERVICES
CHAPTER 38. HEALTH AND SAFETY
SUBCHAPTER A. GENERAL PROVISIONS

§38.002 –Immunization Records; Reporting

- (a) Each public school shall keep an individual immunization record during the period of attendance for each student admitted. The records shall be open for inspection at all reasonable times by the Texas Education Agency or by representatives of local health departments or the Texas Department of Health.
- (b) Each public school shall cooperate in transferring students' immunization records to other schools. Specific approval from students, parents, or guardians is not required before transferring those records.
- (c) The Texas Education Agency and the Texas Department of Health shall develop the form for a required annual report of the immunization status of students. The report shall be submitted by all schools at the time and in the manner indicated in the instructions printed on the form.

Credits:

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995.

THE TEXAS ADMINISTRATIVE CODE
TITLE 19: EDUCATION TEAM



CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER AA. COMMISSIONER'S RULES

§129.1021 – Calculation of Average Daily Attendance

(a) For each school district or charter school in which the total enrollment contains 5.0% or more students who have certificates of eligibility in the state's migrant student tracking database, the commissioner of education will calculate the district's or charter school's annual average daily attendance (ADA) by using the best four of the six-week periods. In no case may the annual ADA calculated by using the best four of the six-week periods exceed the sum of the number of students who have certificates of eligibility plus the ADA calculated by using all six six-week periods.

(b) For each school district or charter school in which the total enrollment contains 5.0% or more students who have certificates of eligibility in the state's migrant student tracking database, the commissioner will calculate the district's or charter school's annual full-time equivalents (FTEs) as used in the calculation of the special education, bilingual education, and career and technical education allotments by using the best four of the six-week periods for each of the three FTE counts. In no case may the annual FTE count calculated by using the best four of the six-week periods exceed the sum of the number of students who have certificates of eligibility plus the FTEs calculated by using all six six-week periods.

Prototype Household Application for Free and Reduced Price School Meals

**APPLY ONLINE:
RETURN TO (School/District Name):
ADDRESS:**

Complete one application per household. Please use a pen (not a pencil).

STEP 1 List ALL children, infants, and students up to and including grade 12. Attach another sheet of paper if you need space for more names.
List ALL children in the household. Do not forget to list infants, children attending other schools, children not in school, and children not applying for benefits. This includes children not related to you in your household.

MI	Child's First Name	Child's Last Name	Grade	Foster Child	Migrant	Runaway	Homeless
				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Check all that apply

If you checked any of these boxes, please refer to the Application Instructions Step 1: Part C & Part D.

STEP 2 Do any household members (including you) participate in: SNAP, TANF, or FDPIR?

NO → Go to STEP 3. YES → Write case number here and proceed to STEP 4. **CASE NUMBER (NOT EBT NUMBER):** _____

Write only one case number in this space.

STEP 3 List ALL household members and income for each member (before taxes and deductions)

A. All Adult Household Members (Anyone who is living with you and shares income and expenses, even if not related, including you.)
List all Adult Household Members not listed in STEP 1 (including yourself) even if they do not receive income. For each Household Member listed, if they receive income, report total gross income (before taxes and deductions) for each source in whole dollars (no cents) only. If they do not receive income from any source, write '0'. If you enter '0' or leave any fields blank, you are certifying (promising) that there is no income to report.

Name of Adult Household Member (First and Last)	Earnings from Work			Public Assistance, Child Support, Alimony			Pensions, Retirement, Social Security, VA Benefits, All Other		
	Weekly	2 Weeks	3 Months	Weekly	2 Weeks	3 Months	Weekly	2 Weeks	3 Months
\$	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
\$	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
\$	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
\$	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
\$	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

How often received? (Repeat for each column)

Check if no Social Security Number

Last Four Numbers of Social Security Number of Primary Wage Earner or other Adult Household Member (If Applicable) _____

Child Income: _____

How often received? (Repeat for each column)

B. Child Income
Sometimes children in the household earn or receive income. Include the TOTAL income (before taxes and deductions) received by ALL children listed in STEP 1 here.

Child Income: _____

STEP 4 Contact information and adult signature. RETURN COMPLETED FORM TO YOUR CHILD'S SCHOOL: Insert school address here

"I certify (promise) that all information on this application is true and that all income is reported. I understand that this information is given in connection with the receipt of Federal funds, and that school officials may verify (confirm) the information. I am aware that if I purposely give false information, my children may lose meal benefits, and I may be prosecuted under applicable State and Federal laws."

Print Name of Adult Signing the Form: _____ Signature of Adult: _____ Today's Date: _____

Mailing Address (if available): _____ City: _____ State: _____ Zip: _____ Phone (optional): _____ Email (optional): _____

Return completed form to your child's school.

Please see application's back for list of income sources.

SOURCES AND EXAMPLES OF INCOME

For additional information on income, please refer to the instructions that accompany this application.

Sources of Income

Public Assistance/Alimony/Child Support

- Unemployment benefits
- Workers' compensation
- Supplemental Security Income (SSI)
- Cash assistance from State or local government
- Alimony payments
- Child support payments
- Veterans' benefits
- Strike benefits

If you are in the U.S. Military:

- Basic pay and cash bonuses (do NOT include combat pay, FSSA, or privatized housing allowances)
- Allowances for off-base housing, food, and clothing

Pensions/Retirement/All other sources of income

- Social Security/Disability (including railroad retirement and black lung benefits)
- Private Pensions or disability benefits
- Income from trusts or estates
- Annuities
- Investment income
- Earned interest
- Rental income
- Regular cash payments from outside household

Examples of Income for Children

- A child has a regular full or part-time job where they earn a salary or wages
- A child is blind or disabled and receives Social Security benefits
- A parent is disabled, retired, or deceased, and their child receives Social Security benefits
- A friend or extended family member regularly gives a child spending money
- A child receives regular income from a private pension fund, annuity, or trust

OPTIONAL

Children's ethnic and racial identities. This information is kept confidential and may be protected by the Privacy Act of 1974.

We are required to ask for information about your children's race and ethnicity. This information is important and helps to make sure we are fully serving our community. Responding to this section is optional and does not affect your children's eligibility for free or reduced price meals.

Ethnicity (check one): Hispanic or Latino (A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish Culture or origin, regardless of race) No: Hispanic or Latino

Race (check one or more): American Indian or Alaska Native Asian Black or African American Native Hawaiian or Other Pacific Islander White

Return this completed form to your child's school. *Do not mail, fax, or email completed applications to the U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights.

DO NOT FILL OUT

For school use only.

Annual Income Conversion: Weekly x 52, Every 2 Weeks x 26, Twice a Month x 24, Monthly x 12. Do not annualize income to determine eligibility unless more than one income frequency is listed.

Total Income Eligibility Free Reduced Denied

Household size Categorical Eligibility

Determining Official's Signature _____ Date _____

Confirming Official's Signature _____ Date _____

Verifying Official's Signature _____ Date _____

Use of Information Statement

The Richard B. Russell National School Lunch Act requires that we use information from this application to see who qualifies for free or reduced price meals. We can only approve complete forms. We may share your eligibility information with education, health, and nutrition programs to help them deliver program benefits to your household. Inspectors and law enforcement may also use your information to make sure that program rules are met. Please be sure to provide the last four numbers of the Social Security number of the adult household member who signs the application. If the adult does not have one, check if no Social Security Number. Applications for a foster child do not need to list a Social Security number. Applications for children in households receiving Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance for Needy Families (TANF) or Food Distribution Program on Indian Reservations (FDPIR) do not need to list a Social Security number. Some children qualify for free meals without an application. Please contact your school to get free meals for a foster child, and children who are homeless, migrant, or runaway.

The contact information below is solely to file a complaint of discrimination

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity. Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at: (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. To file a program discrimination complaint, a complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

*MAIL: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410

*FAX: (833) 256-1665 or (202) 696-7442, or
EMAIL: program.intake@usda.gov

*Do not mail applications to this address, only complaints of discrimination.

This institution is an equal opportunity provider.

Return completed form to your child's school.

School Meals

Translated Applications

This page features foreign language translations of the Prototype Application for Free and Reduced Price School Meals for SY2016-2017. They are provided by USDA as a template to assist State and local agencies in serving households where English is not spoken as a primary language. Households may also download these resources directly to be filled out and submitted to their local school district.

In addition to the application form, each translated packet also includes application instructions, a parent letter/FAQ. We also provide a packet of communications documents to be used by State and local agencies for information sharing requests, income verification, and benefit issuance notices to households. State and local agencies responsible for administering the school meal programs may use these materials in their current form, or may adapt them as needed.

Additionally, an "I Speak" resource document is available to help identify the primary language of non-English speakers. It uses a short phrase in each of the 49 languages that an applicant can check to indicate the language they speak. "I Speak" can help Local Educational Agencies select the appropriate translation as well as ensure consistent and effective interaction with applicants who have limited English proficiency.

Albanian	Farsi	Italian	Nepali	Spanish
Amharic	French	Iu Mien	Polish	Tagalog
Arabic	French Creole	Jamaican Creole	Portuguese	Thai
Armenian	Greek	Japanese	Punjabi	Tigrinya
Bengali	Gujarati	Karen	Romanian	Ukrainian
Bosnian	Haitian Creole	Khmer	Russian	Urdu
Burmese	Hindi	Korean	Samoan	Vietnamese
Chinese (Simplified)	Hmong	Kru	Serbian	Yiddish
Chinese (Traditional)	Igbo	Kurdish	Somali	Yoruba
Croatian	Ilokano	Laotian	Sudanese	

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Language Rights Issues

Lau v. Nichols, 414 U.S. 563 (1974)

The U.S. Supreme Court held (1) that discrimination on the basis of language proficiency is discrimination on the basis of national origin under Title VI of the Civil Rights Act of 1964 and (2) that treating people with different needs in the same way is not equal treatment.

Title VI of the Civil Rights Act of 1964 states, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

In Lau, the U.S. Supreme Court stated, in part, "Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired these basic skills, is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful."

Castaneda v. Pickard, 648 F.2d 989 (5th Cir. 1981)

The Court of Appeals articulated a three-part test for assessing a school system's treatment of limited English proficient students. The standard requires (1) a sound approach to the education of these students, (2) reasonable implementation of the approach, and (3) outcomes reflecting that the approach is working.

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EDUCATION CODE
TITLE 2. PUBLIC EDUCATION
SUBTITLE F. CURRICULUM, PROGRAMS, AND SERVICES
CHAPTER 29. EDUCATIONAL PROGRAMS
SUBCHAPTER B. BILINGUAL EDUCATION AND SPECIAL LANGUAGE PROGRAMS

§ 29.053 – Establishment of Bilingual Education and Special Language Programs

- (a) The agency shall establish a procedure for identifying school districts that are required to offer bilingual education and special language programs in accordance with this subchapter.
- (b) Within the first four weeks following the first day of school, the language proficiency assessment committee established under Section 29.063 shall determine and report to the board of trustees of the district 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. The board shall report that information to the agency before November 1 each year.
- (c) 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.
- (d) 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.

Credits

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 2021, 87th Leg., ch. 973 (S.B. 2066), § 7, eff. Sept. 1, 2021.



EDUCATION CODE
TITLE 2. PUBLIC EDUCATION
SUBTITLE F. CURRICULUM, PROGRAMS, AND SERVICES
CHAPTER 29. EDUCATIONAL PROGRAMS
SUBCHAPTER A. SPECIAL EDUCATION PROGRAM

B. §29.061 – Bilingual Education and Special Language Teachers

Sec. 29.061. BILINGUAL EDUCATION AND SPECIAL LANGUAGE PROGRAM TEACHERS. (a) The State Board for Educator Certification shall provide for the issuance of teaching certificates appropriate for bilingual education instruction to teachers who possess a speaking, reading, and writing ability in a language other than English in which bilingual education programs are offered and who meet the general requirements of Chapter 21. The board shall also provide for the issuance of teaching certificates appropriate for teaching English as a second language. The board may issue emergency endorsements in bilingual education and in teaching English as a second language.

(b) A teacher assigned to a bilingual education program using one of the following program models must be appropriately certified for bilingual education by the board:

- (1) transitional bilingual/early exit program model; or
- (2) transitional bilingual/late exit program model.

(b-1) A teacher assigned to a bilingual education program using a dual language immersion/one-way or two-way program model must be appropriately certified by the board 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.

(b-2) A school district that provides a bilingual education program using a dual language immersion/one-way or two-way program model may assign a teacher certified under Subsection (b-1)(1) for the language other than English component of the program and a different teacher certified under Subsection (b-1)(2) for the English language component.

(c) A teacher assigned to an English as a second language program must be appropriately certified for English as a second language by the board.

(d) A school district may compensate a bilingual education or special language teacher for participating in a continuing education program that is in addition to the teacher's regular contract. The

continuing education program must be designed to provide advanced bilingual education or special language program endorsement or skills.

(e) The State Board for Educator Certification and the Texas Higher Education Coordinating Board shall develop a comprehensive plan for meeting the teacher supply needs created by the programs outlined in this subchapter.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 453 (H.B. 218), Sec. 1, eff. June 15, 2015.



EDUCATION CODE
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SUBTITLE F. CURRICULUM, PROGRAMS, AND SERVICES
CHAPTER 29. EDUCATIONAL PROGRAMS
SUBCHAPTER A. SPECIAL EDUCATION PROGRAM

C. §29.0561 – Evaluation of Transferred Students; Reenrollment

Sec. 29.0561. EVALUATION OF TRANSFERRED STUDENTS; REENROLLMENT.

(a) The language proficiency assessment committee shall reevaluate a student who is transferred out of a bilingual education or special language program under Section 29.056(g) if the student earns a failing grade in a subject in the foundation curriculum under Section 28.002(a)(1) 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.

(b) During the first two school years after a student is transferred out of a bilingual education or special language program under Section 29.056(g), the language proficiency assessment committee shall review the student's performance and consider:

(1) the total amount of time the student was enrolled in a bilingual education or special language program;

(2) the student's grades each grading period in each subject in the foundation curriculum under Section 28.002(a)(1);

(3) the student's performance on each assessment instrument administered under Section 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 Subchapter A, Chapter 37.

(c) After an evaluation under this section, the language proficiency assessment committee may require intensive instruction for the student or reenroll the student in a bilingual education or special language program.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 3.07, eff. May 31, 2006.

continuing education program must be designed to provide advanced bilingual education or special language program endorsement or skills.

(c) The State Board for Educator Certification and the Texas Higher Education Coordinating Board shall develop a comprehensive plan for meeting the teacher supply needs created by the programs outlined in this subchapter.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 453 (H.B. 218), Sec. 1, eff. June 15, 2015.

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The Legal Requirement for School Districts to Translate/Interpret for Parents Who Do Not Speak English

All school districts to which Title VI of the Civil Rights Act of 1964 applies are required by federal law to translate or interpret all documents and communications with parents who are not fluent in English into a language they can understand.

On May 25, 1970, the U.S. Department of Health, Education, and Welfare—the predecessor to the U.S. Department of Education—Office for Civil Rights (OCR) issued formal guidance establishing the policy that “[s]chool districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.” In the 1974 U.S. Supreme Court case, *Lau v. Nichols*, 414 U.S. 563, the Court affirmed the validity of these guidelines. Then in 2000, OCR further reinforced these requirements by issuing a document which stated that “Title VI is violated if . . . parents whose English is limited do not receive school notices and other information in a language they can understand.”

Recent OCR Cases of School Districts Failing to Meet the Requirement

OCR has resolved three recent cases where school districts failed to provide adequate translation and interpretation services to parents who speak a language other than English. In Cleveland, Ohio, a complaint was filed directly to OCR and in Tulsa, Oklahoma and Dearborn, Michigan the school districts were found to violate the law as a result of OCR compliance reviews.

Cleveland Metropolitan School District

The complaint alleged that the school district failed to provide limited English proficient (LEP) parents with information concerning activities and other school-related matters in a language that they could understand. The complaint also alleged the district failed to provide information to LEP parents regarding the proposed expulsion of their son in a language that they could understand.

The resolution reached with OCR requires the district to implement a written plan to provide language assistance to LEP parents. The plan requires notifying parents, in a language they can understand, of the availability of language assistance; identifying which parents need language assistance; ensuring that a list is maintained in each building and on the district level of the parents needing assistance; advising staff of parents' need for assistance; ensuring that staff obtain adequate translators in a timely manner; and ensuring

that vital documents are translated into each language spoken by parents likely to be affected by the district's programs and activities.

Tulsa Public Schools

The information obtained during OCR's investigation indicated that the school district did not have written policies or procedures for responding to parent requests for documents in languages other than English or for a foreign language interpreter. The district failed to consistently track or keep records relating to which parents in the district are LEP, the requests for translation or interpretation services, and the services provided to LEP parents. The investigation also found that the district did not have a set process in place for notifying LEP parents that it has interpreters and translators available for school-related communications. The district failed to ensure that the interpreters and translators it did have were adequately trained. OCR also noted that the district failed to provide translation and interpretation services for parents who speak languages other than Spanish.

The resolution reached with the district requires it to submit a detailed plan for providing meaningful access to information about its programs and activities for LEP parents. The district must provide language assistance services to all LEP parents and guardians of district students needing such assistance. Also, the district must provide training for administrators and staff regarding the provision of language assistance services as well as ensure that all its interpreters and translators are appropriately trained and proficient in the language for which they provide assistance.

Dearborn Public Schools

The OCR investigation found that the school district did not have an effective process for determining which students have LEP parents and for identifying the language needs of those parents. In addition, the district did not notify any of the LEP parents of the availability of translation and interpretation services, which were not available to all LEP parents, nor did it ensure that the interpreters and translators it was using were competent. While an interpreter for Arabic-speaking LEP parents was typically available, there was no system in place to facilitate communication with a parent who spoke neither English nor Arabic. Also, the district did not have a system in place for notifying district teachers and staff about the needs of LEP parents, and did not provide appropriate guidance to staff about communicating with LEP parents in a language other than English.

The resolution reached with the district requires it to implement a written plan to provide language assistance services to LEP parents that ensures that they have meaningful access to the district's programs and activities. The plan must include the use of various services, such as onsite translators/interpreters, telephonic translators/interpreters, and effective translation programs. Also, the district must revise its home language survey to ensure that it accurately identifies LEP parents in the district needing language assistance.

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Special Education and English Learners

Providing a Special Education Program for English Learner (EL) students may present certain challenges to educators, but the mandates and protections concerning provision of these educational services, found in federal law, are clear.

There are two key fundamental principles which must be observed by a school district in this area.

Both Title VI/EEOA and IDEA Apply

An English Learner student who needs, or could potentially need, Special Education services must be accorded the right to receive both a language acquisition program (such as English as a Second Language or similar services) and Special Education services, not one or the other. Both must be made available to the student.

In joint guidance issued in the form of a Dear Colleague letter, the U. S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice stated:

The Departments are aware that some school districts have a formal or informal policy of 'no dual services,' i.e., a policy of allowing students to receive either EL services or special education services, but not both. Other districts have a policy of delaying disability evaluations of EL students for special education and related services for a specified period of time based on their EL status. These policies are impermissible under the IDEA [Individuals with Disabilities Education Act] and Federal civil rights laws, and the Departments expect SEAs to address these policies in monitoring districts' compliance with Federal law.¹

Language of SPED Testing and Evaluation

When evaluating an English Learner for possible Special Education services, it is important to conduct that evaluation in a manner and language that is comprehensible to the student. If the evaluation is conducted in English and the student does not easily understand English, the evaluation results are likely to be unreliable and lead to a misidentification of the student for Special Education services.

Regarding this issue, the Education and Justice Departments stated in the joint guidance:

When conducting [Special Education] evaluations, school districts must consider the English language proficiency of EL students in determining the appropriate assessments and other

¹ U.S. Department of Education, Office of Civil Rights/U.S. Department of Justice, Civil Rights Division, *School's Civil Rights Obligations to English Learner Students and Limited English Proficient Parents*, 25 (Jan 7, 2015), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>

evaluation materials to be used. School districts must not identify or determine that ELL students are students with disabilities because of their limited English language proficiency.²

* * *

Recent DOJ Enforcement Agreement

The Department of Justice (DOJ) has entered into a number of consent agreements with school districts under the Equal Educational Opportunities Act of 1974 (EEOA)³ regarding these issues. The most instructive is an agreement entered into in 2014 with the Crestwood School District in Michigan. A 2011 complaint filed with DOJ included a wide range of allegations that, among other things, the Crestwood School District was not providing sufficient language acquisition services or sufficient translation and interpretation services to special education students. The ensuing investigation led to a consent agreement, the elements of which demonstrate what the Government has determined must be provided in situations relating to Special Education and English Learner students:

Crestwood School District Consent Agreement⁴

- Pursuant to the consent agreement, all special education assessments must be conducted in the student's native language or "in the form most likely to yield accurate information" pertaining to an assessment of the student's potential disabilities. Furthermore, the interpretation of these assessments must include consultation with an ESL instructor to ensure that the student's language barrier does not result in a misdiagnosis of special education needs.
- The parents of students with both English language acquisition and special education needs must be informed in writing, in a language they can understand, that their child is entitled to both language acquisition and special education services.
- All "Individualized Education Program (IEP) Teams" that assess the educational needs of special education students and propose appropriate courses of action must include an ESL instructor whenever a plan for a student who is entitled to both special education and language acquisition services is being considered. These teams must document, on at least an annual basis: (1) the student's progress in acquiring English language skills; (2) the extent to which the student's disability is affecting such progress; (3) any decisions regarding the impact of the student's disability on the language acquisition delivery plan, and the rationale for those decisions; and (4) the language acquisition program models and the instructors assigned to the student.

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²Id., at 24

³The EEOA "requires states and school districts to provide English Language Learner (ELL) students with appropriate services to overcome language barriers..." U.S. Department of Justice, Civil Rights Division, <https://www.justice.gov/crt/educational-opportunities-section>

⁴U.S. Department of Justice, Civil Rights Division, *Settlement Agreement Between The United States of America and The Crestwood School District*, (October 13, 2014), <https://www.justice.gov/sites/default/files/crt/legacy/2014/08/27/crestwoodagree.pdf>

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ACCESS TO POST-SECONDARY EDUCATION FOR IMMIGRANT STUDENTS

There is often confusion between the issue of (1) gaining admission or access to post-secondary education and (2) paying for that education.

Access: Of all the states and the District of Columbia, only three states currently restrict access to publicly funded colleges by undocumented students: South Carolina, Alabama, and Georgia. (Georgia denies admission to undocumented students to any schools that do not admit all academically qualified students.) All other states allow undocumented students to be admitted to public two year and four year colleges with the same admissions criteria that other students must have to matriculate. Private institutions can do what the institution chooses to do.

In-state/Out-of-state tuition:

The following states allow in-state tuition for undocumented students who graduate from high schools in the state:

Arizona	Minnesota
California	Nebraska
Colorado	New Jersey
Connecticut	New Mexico
District of Columbia	New York
Florida	Oklahoma
Hawaii (University of Hawaii campuses)	Oregon
Illinois	Rhode Island
Kansas	Texas
Kentucky	Utah
Maryland	Virginia
Michigan (University of Michigan campuses)	Washington

Access to federal assistance: Undocumented students, including those who have been granted DACA protection, do not have a right to federal loans or grants.



Homeland Security

October 27, 2021

MEMORANDUM TO: Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement

Troy A. Miller
Acting Commissioner
U.S. Customs and Border Protection

Ur M. Jaddou
Director
U.S. Citizenship and Immigration Services

Robert Silvers
Under Secretary
Office of Strategy, Policy, and Plans

Katherine Culliton-González
Officer for Civil Rights and Civil Liberties
Office of Civil Rights and Civil Liberties

Lynn Parker Dupree
Chief Privacy Officer
Privacy Office

FROM: Alejandro N. Mayorkas
Secretary

A handwritten signature in black ink, appearing to read "Alejandro N. Mayorkas".

SUBJECT: **Guidelines for Enforcement Actions in or Near Protected Areas**

This memorandum provides guidance for ICE and CBP enforcement actions in or near areas that require special protection. It is effective immediately.

This memorandum supersedes and rescinds John Morton's memorandum entitled, "Enforcement Actions at or Focused on Sensitive Locations" (number 10029.2, dated October 24, 2011), and David Aguilar's memorandum entitled, "U.S. Customs and Border Protection Enforcement Actions at or Near Certain Community Locations" (dated January 18, 2013).

I. Foundational Principle

In our pursuit of justice, including in the execution of our enforcement responsibilities, we impact people's lives and advance our country's well-being in the most fundamental ways. It is because of the profound impact of our work that we must consider so many different factors before we decide to act. This can make our work very difficult. It is also one of the reasons why our work is noble.

When we conduct an enforcement action – whether it is an arrest, search, service of a subpoena, or other action – we need to consider many factors, including the location in which we are conducting the action and its impact on other people and broader societal interests. For example, if we take an action at an emergency shelter, it is possible that noncitizens, including children, will be hesitant to visit the shelter and receive needed food and water, urgent medical attention, or other humanitarian care.

To the fullest extent possible, we should not take an enforcement action in or near a location that would restrain people's access to essential services or engagement in essential activities. Such a location is referred to as a "protected area."

This principle is fundamental. We can accomplish our enforcement mission without denying or limiting individuals' access to needed medical care, children access to their schools, the displaced access to food and shelter, people of faith access to their places of worship, and more. Adherence to this principle is one bedrock of our stature as public servants.

II. Protected Areas

Whether an area is a "protected area" requires us to understand the activities that take place there, the importance of those activities to the well-being of people and the communities of which they are a part, and the impact an enforcement action would have on people's willingness to be in the protected area and receive or engage in the essential services or activities that occur there. It is a determination that requires the exercise of judgment.

The following are some examples of a protected area. The list is not complete. It includes only examples:

- A school, such as a pre-school, primary or secondary school, vocational or trade school, or college or university.
- A medical or mental healthcare facility, such as a hospital, doctor's office, health clinic, vaccination or testing site, urgent care center, site that serves pregnant individuals, or community health center.
- A place of worship or religious study, whether in a structure dedicated to activities of faith (such as a church or religious school) or a temporary facility or location where such activities are taking place.

- A place where children gather, such as a playground, recreation center, childcare center, before- or after-school care center, foster care facility, group home for children, or school bus stop.
- A social services establishment, such as a crisis center, domestic violence shelter, victims services center, child advocacy center, supervised visitation center, family justice center, community-based organization, facility that serves disabled persons, homeless shelter, drug or alcohol counseling and treatment facility, or food bank or pantry or other establishment distributing food or other essentials of life to people in need.
- A place where disaster or emergency response and relief is being provided, such as along evacuation routes, where shelter or emergency supplies, food, or water are being distributed, or registration for disaster-related assistance or family reunification is underway.
- A place where a funeral, graveside ceremony, rosary, wedding, or other religious or civil ceremonies or observances occur.
- A place where there is an ongoing parade, demonstration, or rally.

We need to consider the fact that an enforcement action taken near – and not necessarily in – the protected area can have the same restraining impact on an individual’s access to the protected area itself. If indeed that would be the case, then, to the fullest extent possible, we should not take the enforcement action near the protected area. There is no bright-line definition of what constitutes “near.” A variety of factors can be informative, such as proximity to the protected area, visibility from the protected area, and people’s behavioral patterns in and around the protected area. The determination requires an analysis of the facts and the exercise of judgment.

The fundamental question is whether our enforcement action would restrain people from accessing the protected area to receive essential services or engage in essential activities. Our obligation to refrain, to the fullest extent possible, from conducting a law enforcement action in or near a protected area thus applies at all times and is not limited by hours or days of operation.

Whether an enforcement action can be taken in or near a courthouse is addressed separately in the April 27, 2021 Memorandum from Tae Johnson, ICE Acting Director, and Troy Miller, CBP Acting Commissioner, entitled “Civil Immigration Enforcement Actions in or Near Courthouses,” which remains in effect.

III. Exceptions and Limitation on Scope

The foundational principle of this guidance is that, to the fullest extent possible, we should not take an enforcement action in or near a protected area. The phrase “to the fullest extent possible” recognizes that there might be limited circumstances under which an enforcement action needs to be taken in or near a protected area. The following are some examples of such limited circumstances:

- The enforcement action involves a national security threat.
- There is an imminent risk of death, violence, or physical harm to a person.
- The enforcement action involves the hot pursuit of an individual who poses a public safety threat.
- The enforcement action involves the hot pursuit of a personally observed border-crosser.
- There is an imminent risk that evidence material to a criminal case will be destroyed.
- A safe alternative location does not exist.

This list is not complete. It includes only examples. Here again, the exercise of judgment is required.

Absent exigent circumstances, an Agent or Officer must seek prior approval from their Agency's headquarters, or as you otherwise delegate, before taking an enforcement action in or near a protected area. If the enforcement action is taken due to exigent circumstances and prior approval was therefore not obtained, Agency headquarters (or your delegate) should be consulted post-action. To the fullest extent possible, any enforcement action in or near a protected area should be taken in a non-public area, outside of public view, and be otherwise conducted to eliminate or at least minimize the chance that the enforcement action will restrain people from accessing the protected area.

Enforcement actions that are within the scope of this guidance include, but are not limited to, such actions as arrests, civil apprehensions, searches, inspections, seizures, service of charging documents or subpoenas, interviews, and immigration enforcement surveillance. This guidance does not apply to matters in which enforcement activity is not contemplated. As just one example, it does not apply to an Agent's or Officer's participation in an official function or community meeting.

This guidance does not limit an agency's or employee's statutory authority, and we do not tolerate violations of law in or near a protected area.

IV. Training and Reporting

Please ensure that all employees for whom this guidance is relevant receive the needed training. Each of your respective agencies and offices should participate in the preparation of the training materials.

Any enforcement action taken in or near a protected area must be fully documented in your Agency's Privacy Act-compliant electronic system of record in a manner that can be searched and validated. The documentation should include, for example, identification of the protected area; the reason(s) why the enforcement action was taken there; whether or not prior approval was obtained and, if not, why not; the notification to headquarters (or headquarters' delegate) that occurred after an action was taken without prior approval; a situational report of what

occurred during and immediately after the enforcement action; and, any additional information that would assist in evaluating the effectiveness of this guidance in achieving our law enforcement and humanitarian objectives.

V. Statement of No Private Right Conferred

This guidance is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

Texas Administrative Code

TITLE 19

EDUCATION

PART 2

TEXAS EDUCATION AGENCY

CHAPTER 74

CURRICULUM REQUIREMENTS

SUBCHAPTER BB

COMMISSIONER'S RULES CONCERNING HIGH SCHOOL GRADUATION

RULE §74.1023

Financial Aid Application Requirement for High School Graduation

(a) In accordance with Texas Education Code (TEC), §28.0256, beginning with students enrolled in Grade 12 during the 2021-2022 school year, a student shall complete and submit a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA) as a requirement for receiving a high school diploma.

(b) A student may opt out of the financial aid application requirement in subsection (a) of this section under one of the following conditions:

(1) the student's parent or other person standing in parental relation submits a signed form indicating that the parent or other person authorizes the student to decline to complete and submit the financial aid application;

(2) the student signs and submits the form described by paragraph (1) of this subsection on the student's own behalf if the student is 18 years of age or older or is emancipated under the Texas Family Code, Chapter 31; or

(3) a school counselor signs and submits the form described by paragraph (1) of this subsection indicating that the school counselor authorizes the student to decline to complete and submit the financial aid application for good cause, as determined by the school counselor.

(c) The board of trustees for each school district and open-enrollment charter school shall adopt the standard opt-out form provided by the Texas Education Agency (TEA) for the purpose of the exceptions under subsection (b) of this section.

(1) The opt-out form shall be available in English, Spanish, and any other language spoken by a majority of the students enrolled in a bilingual education or special language program under TEC, Chapter 29, Subchapter B, in the district or charter school. Districts and charter schools are responsible for translations not provided by TEA.

(2) The opt-out form must include the student's signature of intent to decline to complete a financial aid application prior to the student's anticipated graduation date.

(d) Each school district and open-enrollment charter school shall provide students with the following notifications regarding the financial aid application requirement.

(1) Standard information regarding the financial aid requirement and the exceptions under subsection (b) of this section shall be provided at the time a student first registers for one or more classes required for high school graduation.

(2) Detailed information regarding instructions for the completion and submission of a financial aid

application shall be provided to a student at the beginning of Grade 12 or at the time a student in Grade 12 transfers into a high school from a non-public school or a public school outside of Texas. The instructions shall include:

(A) an explanation of the FAFSA and TASFA and the difference between the two;

(B) instructions for how to access the FAFSA and TASFA, including key dates and deadlines for completion and submission;

(C) resources available to support completion and submission of the FAFSA and TASFA;

(D) documents and information required to complete the FAFSA or TASFA; and

(E) contact information for school staff or local community resources available to support completion of the forms.

(3) Options available to a student under subsection (b) of this section if a student wishes to decline to complete and submit a financial aid application shall be provided to a student at the beginning of Grade 12 or at the time a student in Grade 12 transfers into a high school from a non-public school or a public school outside of Texas. The options shall include:

(A) the opt-out form and explanation of required signatures; and

(B) notification that if the student chooses to opt out for the purposes of graduation, the student will still be eligible to complete the FAFSA or TASFA that year or in subsequent years.

(e) Each school district and open-enrollment charter school shall require one of the following methods of proof that a student has completed and submitted the FAFSA or TASFA as required by this section.

(1) Completion and submission of the FAFSA shall be confirmed through one of the following methods:

(A) ApplyTexas Counselor Suite FAFSA data;

(B) notification from the United States Department of Education that demonstrates a student has completed and submitted a FAFSA; or

(C) a local policy developed by a school district or an open-enrollment charter school for the method by which a student must provide proof that the student has completed a FAFSA.

(2) School districts and open-enrollment charter schools shall develop a local policy for the method by which a student must provide proof that the student has completed a TASFA.

(f) Each school district and open-enrollment charter school shall report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) the following information not later than December 1 of each school year for students awarded diplomas in the previous school year:

(1) the number of students who completed and submitted a financial aid application; and

(2) the number of students who submitted an exception.

(g) Each school district and open-enrollment charter school shall maintain student financial aid application information securely and ensure compliance with federal law regarding the confidentiality of student

educational information, including the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), and any state law relating to the privacy of student information.

Source Note: The provisions of this §74.1023 adopted to be effective October 26, 2021, 46 TexReg 7208

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<u>TITLE 19</u>	EDUCATION
<u>PART 2</u>	TEXAS EDUCATION AGENCY
<u>CHAPTER 89</u>	ADAPTATIONS FOR SPECIAL POPULATIONS
<u>SUBCHAPTER BB</u>	COMMISSIONER'S RULES CONCERNING STATE PLAN FOR EDUCATING EMERGENT BILINGUAL STUDENTS
RULE §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.

Source Note: The provisions of this §89.1205 adopted to be effective September 1, 1996, 21 TexReg 5700; amended to be effective March 5, 1999, 24 TexReg 1383; amended to be effective April 18, 2002, 27

TexReg 3105; 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

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<u>SUBCHAPTER BB</u>	COMMISSIONER'S RULES CONCERNING STATE PLAN FOR EDUCATING EMERGENT BILINGUAL STUDENTS
RULE §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(1) 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.
-

Texas Administrative Code

<u>TITLE 19</u>	EDUCATION
<u>PART 2</u>	TEXAS EDUCATION AGENCY
<u>CHAPTER 89</u>	ADAPTATIONS FOR SPECIAL POPULATIONS
<u>SUBCHAPTER BB</u>	COMMISSIONER'S RULES CONCERNING STATE PLAN FOR EDUCATING EMERGENT BILINGUAL STUDENTS
RULE §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).

Texas Administrative Code

TITLE 19	EDUCATION
PART 2	TEXAS EDUCATION AGENCY
CHAPTER 101	ASSESSMENT
SUBCHAPTER AA	COMMISSIONER'S RULES CONCERNING THE PARTICIPATION OF ENGLISH LANGUAGE LEARNERS IN STATE ASSESSMENTS
DIVISION 1	ASSESSMENTS OF ENGLISH LANGUAGE PROFICIENCY AND ACADEMIC CONTENT FOR ENGLISH LANGUAGE LEARNERS
RULE §101.1003	English Language Proficiency Assessments

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

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

(1) Students with the most significant cognitive disabilities who cannot participate in the general English language proficiency assessment, even with allowable accommodations, shall participate in the alternate English language proficiency assessment to meet federal requirements.

(2) The ARD committee shall document the decisions and justifications in the student's individualized education program, and the LPAC shall document the decisions and justifications in the student's permanent record file.

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

Source Note: The provisions of this §101.1003 adopted to be effective December 22, 2011, 36 TexReg 8521; amended to be effective May 31, 2020, 45 TexReg 3439

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<u>SUBCHAPTER AA</u>	COMMISSIONER'S RULES CONCERNING THE PARTICIPATION OF ENGLISH LANGUAGE LEARNERS IN STATE ASSESSMENTS
<u>DIVISION 1</u>	ASSESSMENTS OF ENGLISH LANGUAGE PROFICIENCY AND ACADEMIC CONTENT FOR ENGLISH LANGUAGE LEARNERS
RULE §101.1005	Assessments of Achievement in Academic Content Areas and Courses

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

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

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

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

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

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

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

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

(c) In accordance with the TEC, §39.027(a), an unschooled asylee or refugee who meets the criteria of paragraphs (1)-(3) of this subsection shall be granted an exemption from an administration of an assessment instrument under the TEC, §39.023(a), (b), or (l). This exemption will only apply during the school year an

unschooled asylee or refugee is first enrolled in a U.S. public school. An unschooled asylee or refugee is a student who:

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

(2) has a Form I-94 Arrival/Departure record, or a successor document, issued by the United States Citizenship and Immigration Services that is stamped with "Asylee," "Refugee," or "Asylum"; and

(3) as a result of inadequate schooling outside the United States, lacks the necessary foundation in the essential knowledge and skills of the curriculum prescribed under the TEC, §28.002, as determined by the LPAC.

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

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

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

(g) School districts may administer the assessment of academic skills in Spanish to a student who is not identified as limited English proficient but who participates in a bilingual program if the LPAC determines the assessment in Spanish to be the most appropriate measure of the student's academic progress.

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

Source Note: The provisions of this §101.1005 adopted to be effective December 22, 2011, 36 TexReg 8521; amended to be effective March 27, 2013, 38 TexReg 1972

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RULE §101.1007	Assessment Provisions for Graduation

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

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

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

(b) Concerning the applicable English I assessment in which the student is enrolled, an ELL who meets the eligibility criteria in subsection (a) of this section shall not be required to retake the assessment each time it is administered if the student passes the course but fails to achieve the passing standard on the assessment.

Source Note: The provisions of this §101.1007 adopted to be effective December 22, 2011, 36 TexReg 8521; amended to be effective March 5, 2014, 39 TexReg 1376

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