

LEGAL ASPECTS OF ESL/BILINGUAL EDUCATION PROGRAM IN US PUBLIC SCHOOL SYSTEM

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ABSTRACT

Legal aspects of ESL/Bilingual Education Program currently implemented in K thru 12 US Public School System that may be applicable to educational systems of other regions and countries are discussed within the context of basis on federal and state laws, Bilingual Education vs ESL (English as a Second Language) Education, hiring certified personnel, training of employed personnel, identification of ESL/Bilingual Education students, ESL/Bilingual Education nomination process, testing for ESL/Bilingual Education, testing criteria to be selected LEP (Limited English Proficient), LPAC (Language Proficiency Assessment Committee), LEP notification of LPAC decisions, accommodations, Documentation and Confidentiality, Standardized Testing of LEP students based on federal AYP (Adequate Yearly Progress) Requirements, LEP exemptions, LAT (Linguistically accommodated testing) test that LEP exempt students take replacing regular standardized tests, Exit Level LEP Postponement, TELPAS (English Language Proficiency Assessment System) tests that all LEP students take based on federal NCLB (No Child Left Behind) Act and Annual Measurable Achievement Objectives (AMAOs), TELPAS Raters, TELPAS Verifiers, Summer Programs for LEP students, LPAC Annual Review/ LEP Status Exit Criteria.

Key Words: English as a Second Language, Bilingual Education, Limited English Proficient, Language Proficiency Assessment, linguistics accommodations, standardized testing

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Legal Basis

Federal Assessment Requirements for English Language Learners

Titles I and III of NCLB (No Child Left Behind) Act hold schools, school districts, and states accountable for the achievement of English language learners through NCLB Adequate Yearly Progress (AYP) measures in reading and mathematics and Annual Measurable Achievement Objectives (AMAOs) related to English language proficiency. These accountability measures are intended to ensure that English language learners receive the instruction they need to become academically proficient in English and meet the same challenging academic achievement standards as other students are expected to meet. NCLB requires that English language learners participate annually in state academic skill assessments as well as in English language proficiency assessments that align with and support attainment of the state's academic achievement standards.

In the example of Texas state, the percentage of LEP students has increased steadily over the past decade. According to the Public Education Information Management System (PEIMS), there were 775,645 limited English proficient students enrolled in Texas public schools in the 2007–2008 school year.

State Requirements for English Language Learners

In US State Law, Education Code, and Chapter 29 and in Subchapter B, it is stated that every student who has a home language other than English and who is identified as limited English proficient shall be provided a full opportunity to participate in a bilingual education or English as a second language program. Based on this requirement, to ensure equal educational opportunity, as

required in the same Education Code §1.002 (a), each school district shall:

- (1) Identify limited English proficient students based on criteria established by the state;
- (2) Provide bilingual education and English as a second language programs, as integral parts of the regular program as described in the Education Code, §4.002;
- (3) Seek certified teaching personnel to ensure that limited English proficient students are afforded full opportunity to master the essential skills and knowledge required by the state; and
- (4) Assess achievement for essential skills and knowledge in accordance with the Education Code, Chapter 39, to ensure accountability for limited English proficient students and the schools that serve them.

Is Education in English a Must?

No, section 89.1220 states that “Students participating in the bilingual education program may demonstrate their mastery of the essential knowledge and skills in either their home language or in English for each content area” with the following condition of stated in subsection b of the same chapter that is, “bilingual education program shall be a full-time program of instruction in which both the students’ home language and English shall be used for instruction. The amount of instruction in each language within the bilingual education program shall be commensurate with the students’ level of proficiency in each language and their level of academic achievement”.

Objectives

Bilingual education and English as a second language programs shall be integral parts of the total school program. Such programs shall use instructional approaches designed to meet the special needs of limited English proficient students. The basic curriculum content of the programs shall be based on the essential skills and knowledge.

Bilingual education and ESL programs shall be located in the regular public schools of the district rather than in separate facilities. In order to provide the required bilingual education or ESL programs, districts may concentrate the programs at a limited number of schools within the district provided that the enrollment in those schools shall not exceed 60% LEP students.

If these services are not provided, the parent of a student may appeal to the commissioner of education if the district fails to comply with the law or the rules. Teachers assigned to the bilingual education program and/or ESL program may receive salary supplements as authorized by the Education Code, §42.153.

Bilingual Education vs English as a Second Language Education

Each school district which has an enrollment of 20 or more limited English proficient students in any language classification in the same grade level district-wide shall offer a bilingual education program as described in subsection (b) of section 89.1205 "Required Bilingual Education and English as a Second Language Programs" for the limited English proficient students in pre kindergarten through the elementary grades who speak that language. "Elementary grades" shall include at least prekindergarten through Grade 5; sixth grade shall be included when clustered with elementary grades.

All limited English proficient students for whom a district is not required to offer a bilingual education program shall be provided an English as a second language program as described in subsection (e) of section 89.1210 of title relating to Program Content and Design, regardless of the students' grade levels and home language, and regardless of the number of such students.

Hiring Certified Personnel/Training of Employed Personnel

Ensuring the provision of appropriate services within the first four weeks of school/student enrollment is required by law, thus hiring an ESL (English as a Second Language) certified teacher unless there is no ESL students to be serviced at school are required. ESL certification is given by department of education of each state upon required examinations, and degrees in addition to the requirements to be a regular licensed teacher.

Besides hiring an ESL certified teacher that does teach classes in special class settings, training the school teachers and administrators before/during the first week of the school, which school principal must keep a copy of attendance list and training materials, is required by law. This is due to implementing the necessary modifications required for ESL students in regular class settings.

Physical Needs

Purchasing of necessary materials such as file cabinets, ESL Tests, etc. as well arranging the location and schedule for the “ESL Room” must be done ahead of time.

Identification Process

Nomination

Identification of eligible LEP (Limited English Proficient) students is done through forming a suspect list via results of Home Language Surveys, teacher recommendations, and previously taken standardized tests and their scores. Regulations state that “If the response on the home language survey indicates that a language other than English is used, the student shall be tested in accordance with §89.1225 of title relating to Testing and Classification of Students”. If one of the languages for a student is different from English, that student is placed into the suspect list.

Suspect list splits into two parts:

For grades 4 and above: Student’s state standardized test history, e.g. TAKS is checked at website of the testing company. If student has passed TAKS Reading and Writing, not counting the Spanish TAKS, in his/her testing history, the student is removed from suspect list. Remaining students should be tested for LEP.

For grades Pre Kindergarten thru 3: Student’s classroom teacher is asked whether student needs to be tested for LEP.

Testing

For identifying LEP students, districts shall administer to each student who has a language other than English as identified on the home language survey;

- (1) In prekindergarten through Grade 1, only an approved OLPT (oral language proficiency test) is implemented due to early literacy (insufficient language reading/writing capabilities for a Norm-referenced Achievement Test), e.g. test LAS Links Language Assessment (OLPT test)

(2) In Grades 2-12, an approved OLPT (oral language proficiency test) and the English reading and English language arts sections from an approved norm-referenced measure, or another approved test, unless the norm-referenced measure is not valid in accordance with subsection (f)(2)(C). Example tests are;

For 2nd Grades; LAS Links (OLPT test) and Terra Nova Survey (Norm-referenced Achievement Test), 2nd edition (Reading and Language Arts parts only)

For 3rd thru 12th Grades; LAS Links (OLPT test) and Terra Nova Survey (Norm-referenced Achievement Test), 3rd edition (Reading and Language Arts parts only)

Districts which provide a bilingual education program shall administer an oral language proficiency test in the home language of the students who are eligible for being served in the bilingual education program. If the home language of the students is Spanish, the district shall administer the Spanish version of the approved oral language proficiency test which was administered in English. If the home language of the students is other than Spanish, the district shall determine the students' level of proficiency using informal oral language assessment measures.

All the oral language proficiency testing shall be administered by professionals or paraprofessionals who are proficient in the language of the test and trained in language proficiency testing. Students with a language other than English shall be administered the required oral language proficiency test within four weeks of their enrollment. Norm-referenced assessment instruments, however, may be administered within the established norming period.

Testing Criteria to be LEP

For entry into a bilingual education or ESL program, a student shall be identified as LEP using the following criteria;

- (1) At prekindergarten through Grade 1, the score on the English oral language proficiency test is below the level designated for indicating limited English proficiency
- (2) At Grades 2-12:
 - (A) the student's score on the English oral language proficiency test is below the level designated for indicating limited English proficiency,
 - (B) the student's score on the reading and language arts sections of the approved norm-referenced measure at his or her grade level is below the 40th percentile; or
 - (C) the student's ability in English is so limited that the administration, at his or her grade level, of the reading and language arts sections of an approved norm-referenced assessment instrument or other approved test is not valid.

Districts may enroll students who are not limited English proficient in the bilingual education program in accordance with the Education Code, §29.058, however no allotments are given.

LPAC (Language Proficiency Assessment Committee)

Chapter §89.1220 states that “Districts shall by local board policy establish and operate a language proficiency assessment committee”.

The LPAC includes, but is not limited to, the following individuals for a campus implementing a bilingual education program:

- a campus administrator
- a professional bilingual educator
- a professional transitional language educator (a bilingual teacher or ESL teacher). A parent of a limited English proficient student (not employed by the school district or charter school) This membership is voluntary based and must be advertised by the school administration to all eligible parents.

The LPAC includes, but is not limited to, the following individuals for a campus implementing an ESL program:

- one or more professional personnel (it is recommended that this include a campus administrator and a certified ESL teacher)
- a parent of a limited English proficient student (not employed by the school district or charter school)
- Teachers that are regularly managing ESL modifications and accommodations may be in LPAC although not required.

The number of LPACs a school district or charter school operates will depend on the number needed to perform their duties within four weeks of the enrollment of limited English proficient students.

LEP Notification

LPAC shall give written notice to the student's parent advising that the student has been classified as limited English proficient and requesting approval to place the student in the required bilingual education or English as a second language program. The notice shall include information about the benefits of the bilingual education or English as a second language program for which the student has been recommended and that it is an integral part of the school program. Pending parent approval of a LEP

student's entry into the bilingual education or ESL program recommended by LPAC, the district shall place the student in the recommended program, but may count only LEP students with parental approval for bilingual education allotment relating to extra funding received from state and federal funds for students in ESL and bilingual programs. For the specific case of students that qualify for services in the special education program, a professional member of the LPAC shall serve on the admission, review, and dismissal (ARD) committee.

Documentation

The student's permanent record shall contain documentation of all actions impacting the LEP student. This documentation shall include;

- (1) the identification of the student as LEP;
- (2) the designation of the student's level of language proficiency;
- (3) the recommendation of program placement;
- (4) parental approval of entry or placement into the program;
- (5) the dates of entry into, and placement within, the program;
- (6) the dates of exemptions from the criterion-referenced test, criteria used for this determination, and additional instructional interventions provided to students to ensure adequate yearly progress;
- (7) the date of exit from the program and parent notification; and
- (8) the results of monitoring for academic success, including students formerly classified as LEP, as required under the Education Code, §29.063(c)(4).

Instructional Implementations

Accommodations

Accommodations are practices and procedures that provide equitable access to grade-level curriculum during instruction and assessment for all students. This includes general education students with special needs, eligible ELLs who need linguistic accommodations, as well as students with disabilities who receive special education services. Accommodations do not reduce learning expectations. Therefore, their use should not replace the teaching of subject-specific knowledge and skills as outlined in the state curriculum for each grade. Certain accommodations may be needed more often at some grades than others depending on academic content and rigor. Although some accommodations may be appropriate for instructional use, they may not be appropriate or allowed on a standardized assessment.

The decision to use an accommodation should be made on an individual basis and take into consideration both the needs of the student and whether the student routinely receives the accommodation in classroom instruction and testing. It is neither appropriate nor effective to provide “one size fits all” accommodations to students. For example, one student with a visual impairment might use large-print textbooks and worksheets while another would benefit from a magnification device. In most cases, accommodations are unique to a student and should not be provided to an entire group of students, such as those in the same class or disability category.

It should be kept in mind that students unaccustomed to using specific accommodations may be hindered rather than helped by the use of accommodations not routinely used in classroom instruction. Sides that needs accommodation information are;

- Regional Level Education service center staff
- District Level Superintendents
- Testing coordinators
- Curriculum directors
- Special education administrators
- Bilingual/English as a second language (ESL)
- coordinators
- Campus Level Principals and other administrators
- Testing coordinators
- Test administrators
- Educational diagnosticians
- Licensed specialists in School Psychology
- Counselors
- Teachers
- Special education staff
- Bilingual/ESL staff
- Parents

Participation of LEP Students to Standardized Tests

Immigrants who enter the U.S. with little or no knowledge of English may not be able to learn English well enough in one or two years to demonstrate their academic skills meaningfully on standardized tests written in English.

Immigrant Spanish speakers in bilingual programs may not be able to meet the curriculum requirements in Spanish in their first year in the U.S. if they have had insufficient schooling outside the U.S.

Both administering standardized assessments to second language learners too soon and delaying the assessments too long can have undesirable consequences. Measuring LEP students' academic skills in English before they have had time to learn English confounds assessment results. Students appear to be behind academically when, in fact, lack of English comprehension prevents a reliable measure of either academic strengths or weaknesses. In addition, requiring immigrants with limited prior schooling to participate to these assessments too soon may cause instruction in U.S. schools to appear lacking when, in fact, there has not been time to teach students the required skills.

On the other hand, delaying the testing of struggling second language learners until they no longer struggle distorts information about how well schools are meeting these students' educational needs. ELLs must learn not only academic content but also a second language. Their learning load increases substantially when academic instruction is not delivered in a comprehensible manner or when they come to the U.S. with limited prior schooling. When their special needs are not identified and addressed promptly, they may struggle academically long after they have learned the English language.

AYP (Adequate Yearly Progress) Requirements

To meet the AYP requirements of Federal NCLB (No Child Left Behind) Act in reading and mathematics, LEP students in grades 3–8 and 10 must be included in state reading and mathematics assessments. NCLB authorizes states to use native

language assessments or other linguistically accommodated assessments aligned to state academic standards. Upon their initial enrollment and at the end of each school year, LPAC shall review all pertinent information on all limited English proficient students. Before the administration of the state criterion-referenced test each year, the LPAC shall determine the appropriate assessment option for each limited English proficient student as outlined in Chapter 101, Subchapter AA of title relating to Commissioner's Rules Concerning the Participation of LEP students in State assessments. The assessment options shall be;

- (1) Administration of the English version criterion-referenced test;
- (2) Administration of the Spanish version criterion-referenced test;
or
- (3) For certain immigrant students, exemption from the criterion-referenced test.

In determining the appropriate assessment option, LPAC consider the following criteria for each student;

- (1) Academic program participation (bilingual education or ESL) and language of instruction;
- (2) Language proficiency, including literacy, in English and/or Spanish;
- (3) Number of years enrolled in U.S. schools;
- (4) Previous testing history(e.g. whether the student has already taken the Spanish-version state assessment for three years or whether the student's years of LEP exemptions combined with administrations of the Spanish-version state assessment already total three years)
- (5) Level achieved on the state English language proficiency assessment in reading;

- (6) Consecutive years of residence outside of the 50 U.S. states; and
- (7) Schooling outside the U.S.

Standardized tests in Spanish are generally the appropriate assessment for nonexempt LEP students in bilingual programs who are receiving most of their instruction in Spanish. Standardized tests in English are generally the appropriate assessment for nonexempt LEP students in bilingual programs who are receiving most of their instruction in English. Students must take standardized tests in English after they have taken the Spanish-version state assessment for three years or after their years of LEP exemptions combined with Spanish-version administrations total three.

Case 1: A student who took the Spanish-version reading test in grades 3, 4, and 5 is not eligible to take the Spanish-version reading test in grade 6 (or again in grade 5 if the student is retained). Similarly, an immigrant student who was exempt in grade 3 but took the Spanish version reading test in grades 4 and 5 is not permitted to take the Spanish-version reading test in grade 6 (or again in grade 5 if the student is retained). These students must take standardized tests in English.

Case 2: When a student is absent from a subject-area test, the student is not eligible for an additional year of exemption or an additional year to take Spanish standardized tests.

Students in English as a Second Language (ESL) Programs

Standardized tests in English are generally the appropriate assessment for nonexempt LEP students in ESL programs because academic instruction in these programs is usually delivered in English. An LPAC may determine, however, that standardized tests in Spanish is appropriate for a student in an ESL program if the assessment in Spanish will provide a valid measure of the student's

academic progress. For example, an LPAC may determine standardized tests in Spanish to be appropriate for a student who has enrolled in U.S. schools shortly before the standardized tests administration and who has received sufficient schooling in Spanish outside the U.S.

When determining whether Spanish standardized tests is appropriate for students in ESL programs, the LPAC should carefully consider the student's language of instruction. A student who has not had recent, ongoing academic instruction in Spanish may not be able to demonstrate in Spanish what he or she has been taught in English. To demonstrate certain knowledge and skills in Spanish, the student will need to have learned academic terminology in Spanish and acquired grade-level Spanish literacy.

Non-LEP Students in Two-Way Immersion Dual Language Programs

School districts may administer Spanish standardized tests to a student who is not identified as limited English proficient but who participates in a two-way immersion dual language program. In these cases, the LPAC will determine whether standardized tests in Spanish or English will provide the more appropriate measure of the student's academic progress. The student may not, however, be administered the Spanish-version assessment for longer than three years. Non-LEP students in two-way immersion dual language programs are not eligible for LEP exemptions.

LEP Exemptions

LEP students may be exempt from the regular academic assessments of their grade level provided the required conditions based on Senate Bill 676 and the Administrative Code, Chapter 101,

Subchapter AA. A small percentage of eligible recent immigrant ELLs (LEP-exempt) take the state academic skill assessments using a linguistically accommodated testing (LAT) process. Instead, they have specific assessments for grade promotions; such as LAT (Linguistically Accommodated Testing) and TELPAS (English Language Proficiency Assessment System).

LEP students in grades 3–10 must meet all of the following general exemption criteria before an LPAC may consider the need for a LEP exemption from standardized tests. A LEP student who does not participate in a bilingual or ESL program because of a parental denial is not eligible for a LEP exemption from state assessments.

Recent immigrant ELLs within their first three school years in U.S. schools who are LEP-exempt under state law and enrolled in AYP grades (grades 3–8 and 10) are included in AYP mathematics accountability measures through LAT administrations. While all ELLs participating in LAT administrations are required to take mathematics tests for AYP participation purposes, their results begin to count in AYP performance measures as of their second school year in U.S. schools. Regardless of their category, immigrant LEP students enrolled in U.S. schools for all of first, second, and third grade are not eligible for a LEP exemption. Students who have been in U.S. schools for all of grades 1, 2, and 3 do not meet the specific exemption criterion related to having had insufficient schooling outside the U.S.

A partial year of school enrollment in the U.S. counts as one school year for purposes of both state assessment exemption eligibility and TELPAS data collection. Students in their fourth or subsequent school year of enrollment in a U.S. school are not eligible for a LEP exemption even if they have been enrolled for

partial school years. Note, however, that schools should not include enrollment in prekindergarten or kindergarten in these counts. School records or signed verification from the child's parent or guardian must be used to indicate the number of school years of enrollment in the U.S.

If a student meets all five general exemption criteria, the LPAC will examine additional criteria termed specific exemption criteria to determine whether the student qualifies for an exemption. The specific exemption criteria differ according to whether students are in

- the first school year of enrollment in the U.S., or
- the second or third school year of enrollment in the U.S.

Specific Exemption Criteria—First School Year in U.S.

Schooling outside U.S.

The student's schooling outside the U.S. did not provide the foundation of learning that US requires and measures by standardized tests, whether the foundation is in knowledge of the English language or specific academic skills and concepts in the subjects assessed (Evidence of Inadequate Foundation of Learning Upon Initial Enrollment in U.S. Schools and Instructional Interventions for Students Who Entered U.S. Schools with an Inadequate Foundation of Learning Forms apply).

Effect of Current Year's Progress

The student's progress by the spring of the school year has not been sufficient to make up for the differences in his or her schooling outside the U.S. (Documentation of Insufficient Progress by Spring of Year forms depending on the category apply).

Specific Exemption Criteria—Second and Third School Years in U.S.

Academic Language Proficiency

By the spring of the second or third school year in the U.S., the student continues to lack the academic language proficiency in English necessary for standardized tests in English to provide a valid and reliable measure of the student's academic progress. The specific exemption criteria differ according to whether students are in the following categories of 1 or 2. Fewer exemptions are necessary for students in category 1 because of the availability of standardized tests in Spanish.

Category 1: Immigrant LEP students in Spanish bilingual education programs in grades 3 thru 6.

Category 2: Other immigrant LEP students in grades 3–10, including students in ESL programs and students in non-Spanish bilingual education programs.

Grades lower than 3rd grades do not take standardized tests, also grades above 10th grade, e.g. 11th grade standardized tests are high school exit level tests and no exemptions may be granted. Grade 11 recent immigrant LEP students served through special education for whom TAKS–M is appropriate may be eligible for a LEP exemption even though they are beyond grade 10 if they meet the exemption criteria. LEP exemptions are not normally permitted for students beyond grade 10 because they are subject to exit level testing requirements; however, grade 11 students taking TAKS–M are not subject to exit level testing requirements. The specific exemption criteria require the LPAC to examine an immigrant student's schooling outside the U.S. in order to determine whether it is reasonable by the spring test administration to expect the student

to meet the curriculum requirements as measured by standardized tests.

Even if a student is identified as LEP but is not an immigrant according to the definition used for assessment purposes, he/she cannot be eligible for a LEP exemption.

Unlike the PEIMS definition, which uses country of birth and number of years in the U.S., the definition for assessment purposes specifies that a LEP student is considered an immigrant when he or she has resided outside of the 50 U.S. states for at least two consecutive years.

Testing decisions may vary by subject area as long as the student meets the eligibility criteria. For example, an LPAC may determine that it is appropriate for a LEP student in grade 5 to take the TAKS mathematics test in English and the TAKS reading test in Spanish.

Specific Cases of Immigrant LEP students who have moved in and out of the U.S. more than once

These students are eligible for exemption only during their first three school years in the U.S. When the total number of school years in which the student has been enrolled in U.S. schools exceeds three, the student is no longer eligible for a LEP exemption.

Example-1: A LEP student lived in Mexico for grades 1–3 and then was enrolled in U.S. schools for grades 4 and 5. The student returned to Mexico for two years and re-enrolled in U.S. schools as an eighth grader. Because grade 8 marks the third school year of enrollment in the U.S., this student could still be eligible for a LEP exemption if he meets the other eligibility criteria in this manual.

Example-2 *If an immigrant LEP student was exempt from TAKS in Spanish in grade 3, but took TAKS in Spanish in grades 4 and 5, he/she cannot take TAKS in Spanish in grade 6, because students must test in English once they have tested in Spanish for three years or, in the case of immigrants, once any LEP exemptions plus Spanish administrations exceed three.*

Example-3: *If an immigrant LEP student is absent from a subject-area test, he/she is not eligible for an additional year of exemption or an additional year to take TAKS in Spanish also because being absent on test day has no effect on the maximum years allowed for exemptions or Spanish version tests.*

Example-4: *An immigrant student moved to the U.S. when she was five and has been enrolled in U.S. schools continuously since grade 1. This student is not eligible for a LEP exemption in third grade because students who come from other countries but have been enrolled in U.S. schools continuously since the beginning of first grade are not eligible for a LEP exemption. Such students would not meet the exemption criteria related to having had insufficient schooling outside the U.S.*

In addition to academic content assessments, US federal legislation requires ELL (English Language Learner)s to take annual English language proficiency assessments in the areas of listening, speaking, reading, and writing.

TELPAS for ELLs in kindergarten through grade 12 has been developed to fulfill this federal requirement. It is important to note that neither LEP exemptions nor linguistic accommodations are permitted for these assessments, as they are designed specifically to measure the English language proficiency level of the students.

LEP-exempt immigrants in their first school year in the U.S. are counted as participants in AYP through participation in TELPAS reading tests. The test results for these students are excluded from AYP performance calculations, as allowed by federal regulations.

LEP-exempt recent immigrant ELLs in their second or third school year in the U.S. participate in LAT administrations of reading and ELA in AYP grades. LAT reading and LAT ELA assessments are used in both AYP participation and performance measures.

To meet federal regulations, states are also required to administer science assessments in at least one elementary, middle school, and high school grade.

Accordingly, LAT science assessments are available for LEP-exempt recent immigrant students in grades 5, 8, and 10. While states are required to administer science tests, federal regulations do not require their use in AYP. LAT science assessments are, therefore, not used in AYP measures and also excluded from the state accountability rating system.

LEP-exempt students who take LAT administrations are eligible to receive certain types of linguistic accommodations that align with accommodations used during instruction. LAT administrations provide for a more valid and reliable assessment of what these students know and can do in federally required academic content assessments.

LAT (Linguistically accommodated testing)

LAT is an assessment process for eligible immigrant English language learners (ELLs) who are granted a limited English proficiency (LEP) exemption under state law but are required to be assessed in certain grades and subjects under federal law.

LAT administrations are available in mathematics and science for recent immigrant ELLs who are LEP-exempt under state policy and within their first three school years in U.S. schools.

LAT administrations are available in reading for recent immigrant ELLs who are LEP-exempt under state policy and in their second or third school year in U.S. schools. LEP-exempt recent immigrant ELLs in their first school year in the U.S. take just the TELPAS reading test for federal AYP accountability.

LAT administrations are available for

- Grades 3–8 reading and grade 10 ELA
- Grades 3–8 and 10 mathematics
- Grades 5, 8, and 10 science

Decisions about LEP exemptions and LAT participation should not be made until shortly before spring testing because students are expected to make progress in English language proficiency throughout the school year.

For instruction and testing, more than one type of linguistic accommodation is often necessary. For example, an ELL who uses a bilingual dictionary or receives translation assistance may also need linguistic simplification or clarification in instruction and testing. As another example, an ELL would rarely benefit **only** from hearing text read aloud during classroom instruction and testing.

Decisions regarding LAT accommodations must be documented by the LPAC in the student's permanent record file. In the case of a LEP student served by special education, testing and accommodation decisions must be made by the student's ARD committee in conjunction with the LPAC. LAT decisions for LEP students receiving special education services must be documented by the LPAC in the student's permanent record file and by the ARD

committee in the student's IEP. ARD committees and LPACs should keep in mind that students who participate in LAT administrations may be eligible for accommodations related to a disability or other special need in addition to linguistic accommodations.

The accommodations provided in LAT mathematics and science administrations are designed to help students understand the language used on the tests. However, linguistic accommodations must not assist students with the subject-area terminology, concepts, or skills assessed. The linguistic accommodations used during LAT administrations must not include explanations, definitions, pictures, gestures, or examples related to mathematical or scientific terminology, concepts, or skills assessed because such accommodations would invalidate the test results. The test administrator must not provide any direct or indirect assistance or reinforcement that identifies or aids in the identification of the correct response to a test item. After a LAT administration, no discussion or scoring of test items is allowed at any time.

LAT mathematics and science administrations are given in one day. LAT reading/ELA administrations for TAKS, including TAKS (Accommodated), are given in two days, with a fixed stopping point at the end of Day 1. Students taking LAT administrations must not be tested in a room with students taking regular TAKS tests. Students taking LAT administrations should be provided individual or small-group administrations. When small-group administrations are used, students should be seated far enough apart that they are not disturbed by interactions between the test administrator and other students. It may be possible to group students taking LAT administrations from more than one grade in the same testing room. Testing personnel should review the needs of the students, their accommodations, their grade levels, and the test

administration directions in the LAT test administrator manual when planning how to group students.

Exit Level LEP Postponement

LEP students are not eligible for an exemption from exit level testing on the basis of limited English proficiency. Like other public school students, they are required to perform satisfactorily on the exit level tests in order to fulfill the assessment portion of their graduation requirements. Although exemptions are not permitted, the LPAC may postpone the initial exit level administration of a LEP student if the student first enrolled in U.S. schools no more than 12 months prior to the administration of the exit level test for which the postponement is sought. This deferral is called the exit level LEP postponement.

Content area teachers as well as ESL teachers should provide specialized instruction to the newly arrived immigrants in their classes. In order to help these students succeed in academic courses, teachers should receive training in methods that accelerate the English acquisition and academic achievement of immigrants who enter the U.S. in high school.

English Language Proficiency Assessment System (TELPAS)

Under the federal No Child Left Behind Act of 2001 (NCLB), English language proficiency assessments must assess students annually in kindergarten through grade 12 in four language domains: listening, speaking, reading, and writing until they meet state exit requirements and are reclassified as non-LEP.

AMAO (Annual Measurable Achievement Objectives)

AMAOs were implemented as NCLB accountability measures in states to evaluate services provided to limited English proficient students for federal accountability purposes.

- AMAO 1 relates to the percentage of ELLs who make progress in learning English.
- AMAO 2 relates to the percentage of ELLs who attain English language proficiency.
- AMAO 3 relates to the percentage of ELLs who are successful on the state's reading and mathematics assessments.

AMAO 1—Progress in Learning English measures whether districts meet AMAO targets related to the percentage of LEP students who make at least one proficiency level of progress a year based on their TELPAS composite proficiency rating.

AMAO 2—Attainment of English Language Proficiency measures whether districts meet AMAO targets related to the percentage of LEP students who attain an advanced high TELPAS composite proficiency rating.

AMAO 3—Meeting AYP in Reading and Mathematics measures whether districts meet AYP targets related to the percentage of LEP students who are successful on the state's reading and mathematics tests. AMAO 3 is met when a district meets AYP for its LEP student group.

The TELPAS reading tests, in the example state of Texas, are administered annually to fulfill aforementioned federal requirements to LEP students in grades 2–12, including LEP students who do not participate in a bilingual or ESL program because of a parental denial. LEP exemptions are not permitted from this assessment. The exception to this is the specific case when a student first arrives in

U.S. schools in the second semester of a school year who may be assigned a rating of beginning without actually taking the TELPAS reading test if the LPAC determines that the student has too little English reading ability to assess. This rating is the point from which the student's growth is measured in future years.

Each district is responsible for developing a local schedule to administer TELPAS assessments during the four-week TELPAS testing window. Because the span of reading ability is so broad on the TELPAS reading tests and the purpose is to measure annual growth in English acquisition, the tests should be an appropriate tool for most LEP students served by special education. Exceptions include students who need a braille version (since a braille version of the TELPAS reading test is not available) and students whose reading instruction is below the level of reading simple words and sentences. In such cases, the LPAC and ARD committee may collaboratively decide that the student's special education needs prevent an appropriate measurement of growth in English reading proficiency. This decision will be recorded at the time of testing, and the student will not participate in the assessment.

Purposes of TELPAS

1. TELPAS assesses the progress of recent immigrants during the time they receive a LEP exemption from the state academic skill assessments. During the time a student receives a LEP exemption or postponement, TELPAS reading tests assess progress in English language acquisition in reading. A student's ability to learn academic content in English will be hindered until the student is able to use the English language as a medium for acquiring challenging academic skills.

2. TELPAS reading test results help indicate when LEP exemptions are no longer necessary. Many LEP students enter U.S. schools with some knowledge of English and do not need three years of exemption. Recent immigrant students with limited English proficiency who attain designated levels of proficiency on the TELPAS reading tests are not eligible for a LEP exemption in any TAKS, TAKS(Accommodated), or TAKS–M subject area in future years.

3. TELPAS provides a way to monitor the English proficiency of students who take academic skill assessments in Spanish. TELPAS helps LPACs ensure that students in bilingual programs are making steady annual progress in English language development during the time their academic progress is measured with TAKS in Spanish. TELPAS is also an indicator LPACs may use to help make decisions about when students who have previously tested in Spanish are ready to begin testing in English.

4. TELPAS provides a way to monitor the English proficiency of students who take academic skill assessments in English. TELPAS allows educators to continue to monitor the English language development of students who are no longer eligible for a LEP exemption from TAKS, TAKS (Accommodated), or TAKS–M but who are still developing proficiency in English. TELPAS results help schools examine to what extent poor academic performance may be caused by an insufficient command of English as opposed to or in conjunction with non-mastery of academic concepts. This information helps in planning for instructional interventions.

TELPAS Raters

A TELPAS rater is a teacher designated to be the official rater of a LEP student's English language proficiency. All designated raters receive special training. For each domain assessed, raters are trained to use a set of holistic proficiency level descriptors to determine whether students are at the beginning, intermediate, advanced, or advanced high level of English language proficiency. Each teacher selected to rate a student must

- have the student in class;
- be knowledgeable about the student's ability to use English in instructional and informal settings;
- hold valid education credentials such as a teacher certificate or permit; and
- be appropriately trained as required by the holistic rating training procedures in accordance with 19 TAC §101.3005.
- Substitute teachers who meet the above criteria may serve as raters. TELPAS raters may include:
 - bilingual education teachers
 - English as a second language (ESL) teachers
 - elementary general education teachers
 - middle or high school general education teachers of foundation subjects
 - special education teachers
 - gifted and talented teachers
 - teachers of enrichment subjects

Paraprofessionals may not serve as raters. On each student's answer document, you will indicate which of the above best describes your teaching relationship to the student you are rating.

TELPAS Verifiers for Grades 2-12 Writing Collections

In conjunction with the district coordinator and principal, the campus testing coordinator will designate one or more persons to verify the contents of the writing collections on the campus. Note that TELPAS raters and paraprofessionals are NOT permitted to perform this function. Note also that training in verifying tasks and TELPAS administration procedures for the holistically rated components is required for TELPAS writing collection verifiers. The writing collection verifier will ensure that

- each collection contains at least 5 total writing samples;
- each writing collection includes at least 1 narrative about a past event and 2 academic writing samples from science, social studies, or mathematics;
- all writing assignments include the student's name and date;
- no writing samples come from before February 1, 2008;
- no papers showing teacher corrections are included;
- no worksheets, question-answer assignments, or TAKS written compositions are included; and
- each collection includes samples written primarily in English.

The rater is responsible for assembling the writing collections according to all criteria in this manual. The rater, not the verifier, is solely responsible for ensuring that the following types of papers are NOT included in the collections:

- papers containing language directly copied from a textbook, lesson, or other written source
- papers in which the student relies heavily on a dictionary or thesaurus

- papers that have been polished through editing by peers, parents, or teachers
- papers that are brief, incomplete, or obviously reflect writing that was rushed
- For schools with many LEP students, one ESL certified teacher may not be enough to rate all TELPAS exams.
- Additional teachers may get licensed easily for being a TELPAS rater via a short workshop for a few days.
- Also a TELPAS verifier usually is the ESL coordinator, who can be licensed online easily.

TELPAS Decision-Making Process

Decisions about TELPAS accommodations for ELLs should be made by the LPAC and, in the case of an ELL receiving special education services, by the ARD committee in conjunction with the LPAC. Because TELPAS holistically rated assessments are based on student class work and observation of students during daily instruction, most accommodations that are used during regular classroom instruction are appropriate. Exceptions are any accommodations that would interfere with the ability of the assessment to provide a clear picture of the student's English language proficiency. For example, submitting writing samples for which a student relied heavily on a dictionary for word selection would not be appropriate.

Summer Programs for LEP Students

Purpose of summer school programs;

- (A) LEP students shall have an opportunity to receive special instruction designed to prepare them to be successful in kindergarten and first grade.
- (B) Instruction shall focus on language development and essential knowledge and skills appropriate to the level of the student.
- The program shall address the affective, linguistic, and cognitive needs of the LEP students in accordance with §89.1210(c) and §89.1210(e) of title relating to Program Content and Design.

Each district required to offer a bilingual or special language program in accordance with The Education Code, §29.053, shall offer the summer program, however enrollment in the program is optional with the parents of the student. To be eligible for enrollment, a student must be eligible for admission to kindergarten or to the first grade at the beginning of the next school year and must be LEP. Limited English proficiency shall be determined by screening students using informal oral language inventories or oral proficiency instruments approved by the commissioner of education, or other appropriate instruments. Programs for students who will be in bilingual education kindergarten and first grade programs shall be bilingual education as well.

The program shall be operated on a one-half day basis, a minimum of three hours each day, for eight weeks or the equivalent of 120 hours of instruction. The student/teacher ratio for the program district-wide shall not exceed 18 to one. A district is not required to provide transportation for the summer program. Teachers shall possess certification or endorsement as required in the Education Code, §29.061, and §89.1245 of title relating to Staffing and Staff

Development. Reporting of student progress shall be determined by the board of trustees. A summary of student progress shall be provided to parents at the conclusion of the program. This summary shall be provided to the student's teacher at the beginning of the next regular school term.

A district may join with other districts in cooperative efforts to plan and implement programs. The summer school program shall not substitute for any other program required to be provided during the regular school term stated in the Education Code, §29.153.

LPAC Annual Review/ LEP Status Exit Criteria

At the end of each year, the LPAC will meet to review student progress and determine whether the student will continue in the program or qualifies for exiting the program (only after first grade). Students must meet established exit criteria and show mastery in listening, speaking, reading, writing, and comprehension in English to successfully exit the bilingual and ESL programs.

A student that is identified as are identified as Bilingual, ESL or LEP Parental Denial may be considered for exit from the ESL/Bilingual program or to change an identified LEP student to a non-LEP status based upon tests that measure the extent to which the student has developed oral and written proficiency and specific language skills in both the student's primary language (for students enrolled in bilingual education) and English, and one of the following as stated in reference 19 TAC§89.1225(h);

- 1) Meeting state performance standards on the reading and writing portions of the English Language criterion referenced test, e.g. TAKS as stated in reference TEC §39.023.

- 2) Scoring at or above the 40th percentile on the language arts and reading portions (only) on a norm referenced standardized achievement test.

Norm-referenced standardized achievement tests (Woodcock Munoz which is used at the beginning) are required only for entry of students in grades 2-12. They MAY be used for program exit (when TAKS is not available) but are NOT required. School districts are not required to administer a norm-referenced standardized achievement test to LEP students each year after initial placement unless there is a district policy requiring the administration of norm referenced standardized achievement tests for all students.

Students in Pre-Kindergarten, Kindergarten and 1st grade may not be exited from a Bilingual or English as second language programs. (§89.1225) An annual review is still conducted by the LPAC but students cannot be reclassified as English proficient at these grade levels. Students exited from the program will be monitored for two years to determine academic success. A student may not be exited from the bilingual education or English as a second language program in prekindergarten or kindergarten. Based on Chapter §89.1240, students meeting exit requirements may continue in the bilingual education or ESL program with parental approval but are not eligible for inclusion in the district bilingual education allotment.

References

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- Adaptations for Special Populations, Commissioner's Rules Concerning State Plan for Educating Limited English Proficient Students 19 TAC Chapter 89, Subchapter AA and BB (2007), US Division of Policy Coordination.
- Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments, Subchapter AA, §101.1001 Policy,
- Commissioner's Rules Concerning the Student Success Initiative, Subchapter BB, §101.2001 Policy, <http://www.tea.state.tx.us/rules/tac/chapter101/ch101aa.html>
- English Language Proficiency Assessments, §101.1003, Texas Education Agency Student Assessment Division
- Guidelines for Identification Process of Prospective LEP (Limited English Proficient) Students (2009), Harmony Science Academy ESL&SPED Services, pp. 2, 5.
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- Standardized Test Accommodations Manual for Students Including General Education Students, Students Receiving Special Education Services, Students with 504 Plans, English Language Learners (2009), Texas Education Agency Student Assessment Division, pp. 14-15, 48-52, 61.
- Student Testing Requirements, Subchapter A, General Provisions, §101.5, Texas Education Agency Student Assessment Division, <http://www.tea.state.tx.us/rules/tac/chapter101/ch101a.html>
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- Texas Education Code, <http://www.statutes.legis.state.tx.us/?link=ED>
- Texas Essential Knowledge and Skills (TEKS), <http://www.tea.state.tx.us/curriculum>

- The English Language Proficiency Standards (ELPS) 19 Texas Administrative Code §74.4, Chapter 74, Subchapter A, English language proficiency level descriptors and student expectations for English language learners (ELLs) (2009), US Division of Policy Coordination.