Sec. 1. LANGUAGE PROFICIENCY ASSESSMENT COMMITTEE (LPAC)

The language proficiency assessment committee ("LPAC") shall select the appropriate assessment option for emergent bilingual students,[1] in accordance with 19 TAC 101.1005. LPAC assessment decisions must be made on an individual student basis in accordance with administrative procedures established by the Texas Education Agency ("TEA").

The LPAC shall document in the student's permanent record file:

1. The decisions and justifications related to English language proficiency assessments under 19 TAC 101.1003;
2. The decisions and justifications related to selecting the appropriate assessment option under 19 TAC 101.1005; and
3. In conjunction with the admission, review, and dismissal ("ARD") committee, the need for allowable testing accommodations under 19 TAC 101.1003 and .1005.

19 TAC 101.1003(b), (c), .1005(a), (c).

Sec. 2. DEFINITIONS

"Recent unschooled immigrant" means an immigrant who initially enrolled in a school in the United States not more than 12 months before the date of the administration of an assessment and who, as a result of inadequate schooling outside of the United States, lacks the necessary foundation in the essential knowledge and skills of the curriculum determined by the LPAC. *Education Code 39.027(g)*.

"Unschooled asylee or refugee" means a student who:

1. Initially enrolled in a school in the United States as:
   a. An asylee as defined by 45 C.F.R. 400.41; or
   b. A refugee as defined by 8 U.S.C. 1101;
2. Has a visa issued by the U.S. Department of State with a Form I-94 Arrival/Departure record, or a successor document, issued by the U.S. Citizenship and Immigration Services that is stamped with "Asylee," "Refugee," or "Asylum"; and
3. As a result of inadequate schooling outside of the United States, lacks the necessary foundation in the essential knowledge and skills of the curriculum prescribed under Education Code 28.002, as determined by the LPAC established under Education Code 29.063.

Education Code 39.027(a-1); 19 TAC 101.1005(c).

[1] In this policy, the term "emergent bilingual student" is synonymous with "English learner" or "limited English proficiency" student, as those terms are used in the Texas Administrative Code.

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"Inadequate schooling outside the United States" is defined as little or no formal schooling outside the United States such that the asylee or refugee lacks basic literacy in his or her primary language upon enrollment in school in the United States. *19 TAC 101.1005(d)*.

Sec. 3. ENGLISH LANGUAGE PROFICIENCY ASSESSMENTS

In kindergarten through grade 12, an emergent bilingual student shall be administered state-identified English language proficiency assessments annually in listening, speaking, reading, and writing to fulfill state requirements under Education Code, Chapter 39, Subchapter B, and applicable federal requirements. *19 TAC 101.1003(a)*.

Sec. 4. LIMITATIONS ON EXEMPTIONS

a) *First Year after Enrollment*

An emergent bilingual student may be administered an accommodated or alternative assessment instrument or may be granted an exemption from or a postponement of the administration of the state assessment for up to one year after initial enrollment in a school in the United States if the student has not demonstrated proficiency in English as determined by the assessment system developed to evaluate academic progress of an emergent bilingual student. *Education Code 39.027(a)(1)*.

b) *Subsequent Years*

An emergent bilingual student granted the initial exemption period above may be administered an accommodated or alternative assessment instrument or may be granted an exemption from or a postponement of the administration of the state assessment for up to:

1. An additional two years if the student is a recent unschooled immigrant or is in a grade for which no assessment instrument in the primary language of the student is available; or
2. An additional four years if the student's initial enrollment in a school in the United States was as an unschooled asylee or refugee.

The LPAC must determine that the student lacks the academic language proficiency in English necessary for an assessment in English to measure the student's academic progress in a valid, reliable manner.

Education Code 39.027(a)(2)-(3).

c) *Minimum Days for Enrollment*

Regardless of the date on which the student initially enrolled in a school in the United States, unless a student is enrolled in a school in the United States for a period of at least 60 consecutive days during a year, the student may not be considered to be enrolled in a school in the United

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States for that year for the purpose of determining a number of years under Education Code 39.027(a)(1), (2), or (3). *Education Code 39.027(a)(1)–(2), (a-1), (a-2), (g)*.

Sec. 5. TESTING IN GRADES 3–8

An emergent bilingual student shall participate in the grades 3–8 assessments and, except as provided below, shall be administered the general form of the English-version state assessment.

a) *Spanish-Version Assessment*

A Spanish-speaking emergent bilingual student 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.

b) *Linguistically Accommodated Assessments*

An emergent bilingual student in grade 3 or higher may be administered the linguistically accommodated English version of the state's mathematics, science, or social studies assessment if:

1. A Spanish-version assessment does not exist or is not the most appropriate measure of the student's academic progress;
2. The student has not yet demonstrated English language proficiency in reading as determined by the English language proficiency assessment under 19 TAC 101.1003; and
3. 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.

c) *Exemption for Asylee or Refugee*

An unschooled asylee or refugee who meets the criteria discussed above shall be granted an exemption from an administration of an assessment instrument under Education Code 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.

19 TAC 101.1005(b), (c).

d) *Refusal of Services*

An emergent bilingual student whose parent or guardian has declined bilingual education/ESL services is not eligible for special assessment, accommodation, or accountability provisions made available to emergent bilingual student. *19 TAC 101.1005(f)*.

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Sec. 6. END-OF-COURSE ASSESSMENTS

An emergent bilingual student shall participate in the end-of-course assessments as required by Education Code 39.023(c) and, except as provided below, shall be administered the general form of the English-version state assessment. *19 TAC 101.1005(b)*.

An emergent bilingual student 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, except as provided below.

a) *Exception*

If an emergent bilingual student enrolled in English I or English for Speakers of Other Languages I has not yet demonstrated English language proficiency in reading as determined by the English language proficiency assessments required above and 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, then he or she shall not be required to retake the applicable English I assessment in which the student is enrolled each time it is administered if the student passes the course but fails to achieve the passing standard on the assessment.

19 TAC 101.1007(a), (b).

Sec. 7. NON-EMERGENT BILINGUAL STUDENTS

Raul Yzaguirre Schools for Success ("RYSS") may administer the assessment of academic skills in Spanish to a student who is not identified as an emergent bilingual student 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. *19 TAC 101.1005(g)*.

Sec. 8. SPECIAL EDUCATION

For each emergent bilingual student who receives special education services, the student's ARD committee in conjunction with the student's LPAC shall select the appropriate assessments.

a) *Selecting Assessments*

The ARD committee shall document the decisions and justifications in the student's individualized education program (IEP). *19 TAC 101.1005(a)*.

b) *English Language Proficiency Tests*

In rare cases, the ARD committee in conjunction with the LPAC may determine that it is not appropriate for an emergent bilingual student who receives special education services to participate in an English language proficiency assessment required above for reasons associated with the

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student's particular disability. The ARD committee shall document the decisions and justifications in the student's IEP, and the LPAC shall document the decisions and justifications in the student's permanent record file. *19 TAC 101.1003(b)*.

In the case of an emergent bilingual student 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 TEA. *19 TAC 101.1003(c)*.

c) ***Alternative Assessment Instruments***

In certain cases, an emergent bilingual student 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. *19 TAC 101.1005(b)*.

An unschooled asylee or refugee who meets these criteria shall be granted an exemption from an administration of an assessment instrument under Education Code 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. *19 TAC 101.1005(c)*.

d) ***Testing Accommodations***

The LPAC in conjunction with the ARD committee shall determine and document any allowable testing accommodations for assessments in accordance with administrative procedures established by TEA. *19 TAC 101.1005(e)*.

Sec. 9. GRADE ADVANCEMENT REQUIREMENTS

The LPAC shall determine appropriate assessment and accelerated instruction for an emergent bilingual student who is administered a grade advancement test in English or Spanish, except as provided by 19 TAC 101.1005. The grade placement committee for an emergent bilingual student shall make its decisions in consultation with a member of the student's LPAC. *19 TAC 101.2003(e)*.

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