Sec. 1. DEFINITIONS

"Emergent bilingual student" means a student whose primary language is other than English and whose English language skills are such that the student has difficulty performing ordinary classwork. *Tex. Educ. Code § 29.052(1)*; *19 Tex. Admin. Code § 101.1003(a)*.

"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 Language Proficiency Assessment Committee ("LPAC"). *Tex. Educ. Code § 39.027(g)*.

"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 Tex. Admin. Code § 101.1005(d)*.

Sec. 2. 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 Texas Education Code, Chapter 39, Subchapter B, and applicable federal requirements. *19 Tex. Admin. Code § 101.1003(a)*.

In rare cases, an admission, review, and dismissal ("ARD") committee in conjunction with the LPAC may determine that it is not appropriate for an emergent bilingual student in grades 2-12 who receives special education services to participate in the general English language proficiency assessment for reasons associated with the student's particular disability. *19 Tex. Admin. Code § 101.1003(b)*.

Students with the most severe cognitive disabilities who cannot participate in the general English language proficiency assessment, even with allowable accommodations, and meet the participation requirements for the alternate English language proficiency assessment shall participate in the alternate English language proficiency assessment to meet federal requirements. 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. 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 the TEA. *19 Tex. Admin. Code § 101.1003(b)-(c)*.

a) *Assessment Participation in General*

The LPAC shall select the appropriate assessment option for each emergent bilingual student in grade 3 or higher in accordance with Subchapter AA, Chapter 101, Part 2, Title 19 of the Texas Administrative Code. 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. The LPAC shall document the decisions and justifications in the student's permanent file, and the ARD committee shall document the decisions and justifications in the student's individualized education program. Assessment decisions shall

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be made on an individual student basis and in accordance with administrative procedures established by the TEA. *19 Tex. Admin. Code § 101.1005(a)*.

b) *Assessment Participation – Grades 3 and Above*

Except as provided by Subsection 2(c) of this policy, an emergent bilingual student shall participate in the grades 3-8 and end-of-course assessments, with or without allowable testing accommodations, as required by Texas Education Code § 39.023(a) and (c). Except as specified in subparagraphs (i) and (ii) below, an emergent bilingual student shall be administered the general form of the English-version state assessment.

i. *Spanish-version State Assessment*

An emergent bilingual student in grades 3-5 may be administered the Spanish-version state assessment, with or without allowable testing accommodations, if the assessment in Spanish is the most appropriate measure of the student's academic progress, in accordance with Texas Education Code § 39.023(*l*). *19 Tex. Admin. Code § 101.1005(b)*.

ii. *Students Receiving Special Education Services*

An emergent bilingual student in grade 3 or higher who receives special education services based on the most significant cognitive disabilities may be administered an alternate assessment instrument based on alternative achievement standards, in accordance with Texas Education Code § 39.023(b), if the student meets the participation requirements. *19 Tex. Admin. Code § 101.1005(b)(2)*.

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

iii. *English I Assessment Provisions for Graduation*

While 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, the following rule shall apply to an emergent bilingual student enrolled in an English I course or an English for Speakers of Other Languages I course if the student:

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 years or less; and
2. The student has not yet demonstrated English language proficiency in reading as determined by the assessment under 19 Texas Administrative Code § 101.1003.

An emergent bilingual student who meets the eligibility criteria above 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. *19 Tex. Admin. Code § 101.1007*.

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c) *Unschooled Asylees or Refugees*

In accordance with Texas Education Code § 39.027(a), an unschooled asylee or refugee who meets the criteria below shall be granted an exemption from an administration of an assessment instrument under Texas 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. An unschooled asylee or refugee is a student who:

1. Enrolled in a U.S. school as an asylee as defined by 45 C.F.R. §400.41 or 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 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 as determined by the LPAC.

19 Tex. Admin. Code § 101.1005(c);

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Sec. 3. 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. *Tex. Educ. 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. *Tex. Educ. 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,

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the student may not be considered to be enrolled in a school in the United States for that year for the purpose of determining a number of years under Texas Education Code § 39.027(a)(1), (2), or (3). *Tex. Educ. Code § 39.027(a)(1)–(2), (a-1), (a-2), (g); Tex. Admin. Code § 101.1001*.

Sec. 4. NON-EMERGENT BILINGUAL STUDENTS

Texas Leadership Public Schools 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 Tex. Admin. Code § 101.1005(f)*.

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