



Special Education Students Participation in Bilingual/English as a Second Language Programs Audit

ASSURANCE • INSIGHT • OBJECTIVITY

Final Report

Audit Plan Code: 19-02

We identified red flags that give the appearance the District may not be consistently providing Bilingual/English as a Second Language program services to students with disabilities who are also ELLs. In addition, there was insufficient evidence to prove that schools in our sample ensured there was meaningful communication of the benefits of the Bilingual/English as a Second Language program with parents of ELL students with disabilities at the time parents denied the student's placement in the program.



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Abbreviations

ARD	Admission, Review, and Dismissal Committee
CAP	Corrective Action Plan
CUM	Student Cumulative Education Record
ELL	English Language Learner
ESL	English as a Second Language
EPISD	El Paso Independent School District
ICQ	Internal Control Questionnaire
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Program
LPAC	Language Proficiency Assessment Committee
SPED	Special Education
TAC	Texas Administrative Code
TEA	Texas Education Agency
TEAMS	Total Education Administrative Management System (Prologic Technology Systems), school management system utilized by the District.
TEC	Texas Ethics Commission



Executive Summary

ASSURANCE • INSIGHT • OBJECTIVITY

We have completed the audit of Special Education Students Participation in Bilingual/English as a Second Language (ESL) Programs. The objective of the audit was to determine compliance with state and federal requirements for students with disabilities identified as English Language Learner (ELL) for whom a parent or guardian has denied placement in a Bilingual/ ESL program. The scope of the audit included students with disabilities identified as ELL for whom the parent or guardian denied placement in a Bilingual/ESL program during the 2017-2018 school year.

The Executive Summary provides, on a summarized basis, the findings discussed throughout the body of the detailed Internal Audit Report that follows. The Internal Audit Report includes background information and detailed findings, recommendations, observations, and exhibits.

Summary of Results

1. We identified red flags that give the appearance the District may not be consistently providing Bilingual/ESL program services to students with disabilities identified as an ELL and instead focuses on providing disability related services.
2. There was insufficient evidence to prove that schools in our sample ensured there was meaningful communication of the benefits of the Bilingual/ESL program with parents of students with disabilities identified as ELLs at the time parents denied placement in the program.
3. We identified errors and inconsistencies in the documentation related to parent denials to place a student in a Bilingual/ESL program to include: the date on the parent denial form did not match the date in TEAMS, parent denial forms were not completely filled out, and Language Proficiency Assessment Committee (LPAC) documentation not supporting that the parent denied participation in the Bilingual/ESL program.
4. We found that out of the 47 students' SPED documentation tested, 21 (45%) did not have evidence that the parental denial of program services were reviewed or discussed during ARD.

Management's Corrective Action Plan

District management and leadership submitted a Corrective Action Plan (CAP) outlining the activities to be implemented. All six (6) recommendations made by Internal Audit were incorporated into the CAP. The CAP appears to be sufficient to address the findings outlined in this report. Internal Audit will conduct follow-up reviews to validate CAP activities have been implemented.

Conclusion

We identified red flags that give the appearance the District may not be consistently providing Bilingual/ESL program services to SPED/ELL students and instead focuses on providing disability related services. There is a risk of noncompliance with state and federal requirements for students with disabilities identified as English Language Learners for which a parent or guardian has denied placement in the Bilingual/ESL programs.

The District should take appropriate actions to ensure there are consistent and equal participation by students who require special education services and Bilingual/ESL program services. The District should consistently provide both SPED and Bilingual/ESL programs to eligible students in a manner appropriate to the student's individual needs.



Background

The Texas Administrative Code (TAC) Chapter 89.1203 (7) (1) defines an English Language Learner (ELL) – A person who is in the process of acquiring English and has another language as the first native language.

The 19 TAC Chapter, 89, Subchapter BB, §89.1201, states: “It is the policy of the state that every student in the state who has a home language other than English and who is identified as an English language learner shall be provided a full opportunity to participate in a bilingual education or English as a second language (ESL) program, as required in the Texas Education Code (TEC), Chapter 29, Subchapter B.

To ensure equal educational opportunity, as required in the TEC, §1.002(a), each school district shall:

- a. identify English language learners based on criteria established by the state;
- b. provide bilingual education and ESL programs, as integral parts of the regular program as described in the TEC, §4.002; and
- c. seek certified teaching personnel to ensure that English language learners are afforded full opportunity to master the essential knowledge and skills required by the state....”

Parents have the right to deny language services by signing a *Parent Refusal of Bilingual/ESL Program Services* form; however, prior to denial of services parents must be informed of the benefits of the language program and that it is an integral part of the school program, as per TEC 29.056 4(d) and Title III, Sec. 3302 Parental Notification.

The TAC Chapter §89.1230 Eligible Students with Disabilities states:

“(a) School districts shall implement assessment procedures that differentiate between language proficiency and handicapping conditions in accordance with Subchapter AA of this chapter (relating to Commissioner's Rules Concerning Special Education Services) and shall establish placement procedures that ensure that placement in a bilingual education or English as a second language program is not refused solely because the student has a disability.

(b) Admission, review, and dismissal (ARD) committee members must work in conjunction with the Language Proficiency Assessment Committee (LPAC) members to review the educational needs of each English language learner who qualifies for services in the special education program.”

The Individuals with Disabilities Education Act (IDEA) and Office of Civil Rights state that ELL students with disabilities must be provided **both** the language assistance and disability-related services to which they are entitled. Parents should receive guidance of the language program recommended and understand the rights, benefits, range of ELL services that their child could receive to ensure the parent understands the purpose and content of the program. Documentation should support that a parent made a voluntary, informed decision to exclude their child from a special language program. Parents may choose to exclude their children from the district's ELL program. A parent's decision to opt out of a program

for ELLs must be knowing and voluntary, and districts may not recommend that parents decline all or some services within a program for ELLs for any reason. School districts have an obligation to ensure parents understand all information regarding their children's education. (U.S. Department of Justice, Civil Rights Division and U.S. Department of Education, Office for Civil rights-Dear Colleague Letter: English Learner Students and Limited English Proficient Parents, January 7, 2015)

Objective and Scope

The objective(s) of the audit was to determine compliance with state and federal requirements for students with disabilities identified as English Language Learners (ELL) for whom a parent or guardian has denied placement in the Bilingual/ESL program. The audit scope included students with disabilities identified as ELL for whom the parent or guardian denied Bilingual/ESL program services during the 2017-2018 school year.

Methodology

To achieve our audit objectives, we:

1. Researched relevant federal/state laws, regulations, Board policies, and department(s) manual/guidelines.
2. Used pre-audit self-assessment, internal control questionnaires, interviews (in person and via telephone), and performed walkthroughs to obtain an understanding of the relevant District procedures, administrative functions, operations, processes, and internal controls in place for students with disabilities identified as ELL for whom a parent or guardian has denied Bilingual/ESL program services.
3. Performed a risk assessment based on our understanding of the District's processes and internal controls in place.
4. Performed data analysis using the 2017-2018 school year SPED/ELL students' data coded with a parent denial and selected a sample of 47 students based on our sampling procedures.
5. Reviewed LPAC documentation in the student cumulative folder, LPAC Binders, and ARD records, and tested the following:
 - a. Determine if evidence of a fully executed *Parent Refusal of Bilingual/ESL Program Services* form for ELL students and was discussed at the ARD after a parent denied services.
 - b. Determine whether the benefits of the Bilingual/ESL program were explained at the time parent signed the denial of program services form.
 - c. Determine if an LPAC committee meeting was held to discuss parental denial and that it was documented in the LPAC minutes.

Inherent Limitations

Because of the inherent limitations in a system of internal controls, there is a risk that errors or irregularities occurred and were not detected. Due professional care requires the internal auditor to conduct examinations and verifications to a reasonable extent. Accordingly, an auditor is able to obtain reasonable, but not

absolute, assurance that procedures and internal controls are followed and adhered to in accordance with the federal, state, local policies, and guidelines.

In accordance with the *Institute of Internal Auditors' Implementation Guide 2320 – Analysis and Evaluation*, “Internal auditors may test a complete population or a representative sample of information. If they choose to select a sample, they are responsible for applying methods to assure that the sample selected represents the whole population and/or time period to which the results will be generalized.” As the objective of this audit did not include testing Information Technology General Controls over applications that produce the system generated data/reports (population) we used to select our sample selections from, we performed manual completeness and accuracy validation checks.

These sample accuracy validation checks gave us a limited level of confidence on the completeness of the TEAMS data provided by Technology Services (TS) for our testing purposes. Therefore, we cannot ascertain populations provided from TEAMS by TS were 100% complete and accurate

Acknowledgement

We would like to acknowledge and thank the staff in Special Education and Special Services, Curriculum and Instruction, Secondary Education Instruction, and campus principals for their cooperation and assistance throughout the audit.

Results

Finding 1

We identified red flags that give the appearance the District may not be consistently providing Bilingual/ESL program services to SPED/ELL students and instead focuses on providing disability related services.

- 1.1 We interviewed central office staff with varying levels of responsibility and authority related to programs for SPED/ELL students. During the interviews, staff acknowledged they were either (i) aware of the practice of not providing all students both the Bilingual/ESL and special education program services or (ii) were not surprised the practice was occurring.

In addition, some staff believed parents were not provided the option to request both programs and were asked to sign a *Parent Refusal of Bilingual/ESL Program Services* form for their children.

- 1.2 Internal Audit contacted (via telephone) the parents of the 47 students in our sample. We were able to speak to 28 parents. Three (3) of the 28 parents interviewed stated that they were told the campus could not provide the Bilingual/ESL program or the child could not receive both programs and parent chose SPED. Four (4) of the 28 parents stated that campus staff recommended English only classes.

- 1.3 We sent internal control questionnaires (ICQs) to the 11 campus principals in the sample, of which 55% (6) of the responses indicate the District has a culture of not providing Bilingual/ESL program to all SPED/ELL students.

In the ICQ, 64% (7) of principals expressed there were insufficient qualified teachers to address SPED/ELL students' needs. According to data provided

by Information Technology as of June 28, 2018, only three (3) of the 11 campuses in our sample had dual certified bilingual/ESL/SPED teachers (six teachers in total).

- 1.4 In the ICQs, 55% (6 of 11) of the respondents expressed there is a need for clear, concise SPED/ELL procedures and training. A draft version of the “LPAC Handbook of Operating Procedures” was posted on myepisid through June 2018. Data owners acknowledged the handbook was not used during training and was not finalized prior to July 2018.

Finding 2

There was insufficient evidence to prove that schools in our sample ensured there was meaningful communication with parents of SPED/ELL students of the benefits of the Bilingual/ESL program at the time parents signed the *Parent Refusal of Bilingual/ESL Program Services* form. According to the Texas Administration Code TAC §29.056(4)(d), Enrollment of Students in Program and Title III, Sec. 3302 Parental Notification, school districts have an obligation to ensure parents understand information regarding their children’s education. Districts must notify parents about information on the language program and the benefits of the program.

There is a risk parents may not know their parental rights and, as such, may not be making well informed decisions regarding the Bilingual/ESL program services their children are eligible to receive.

- 2.1 Internal Audit staff contacted via telephone the parents of the 47 students in our sample and were able to speak to 28 of the parents. The parents were asked questions regarding the Bilingual/ESL program. Below is a summary of the parents’ responses:
 - 7 of 28 (25%) of parents felt benefits of the program were not fully explained to them.
 - 4 of 28 (14%) of parents stated they did not sign a *Parent Refusal of Bilingual/ESL Program Services* form. Another 10 of 28 (38%) did not remember, or were unsure whether they signed a *Parent Refusal of Bilingual/ESL Program Services* form.
 - 13 of 28 (46%) of parents did not understand or know the services their child was receiving.
- 2.2 Internal audit reviewed 47 students’ documentation for evidence the benefits of the Bilingual/ESL program were explained to parents. In 98% (46 of 47) of instances, documentation did not include language to explain the benefits. The *Parent Refusal of Bilingual/ESL Program Services* form did not have language or evidence attached that a conference was held with parents to fully explain benefits as required.

The benefits are provided with the Districts “2nd grade through 12th grade Parental Notification Identification and Placement Bilingual/ESL Program” form to obtain parental approval of ELL service. *This form states, “Parent Refusal should be stapled if parent(s) refuses program services.”* We did not find any approval forms with benefits attached to the *Parent Refusal of Bilingual/ESL Program Services* form.

According to administration, the *Parent Refusal of Bilingual/ESL Program Services* form was revised in August 2018, and training was held from September 2018 thru February 2019, and use of the revised form began in Fall 2019.

Finding 3

We identified errors and inconsistencies in the documentation related to parent denials to place a student in a Bilingual/English as a Second Language program as follows:

- 3.1 In 5 of 47 (11%) instances, the date on the *Parent Refusal of Bilingual/ESL Program Services* form did not match the date captured in TEAMS. Inaccurate dates may impact funding loss or inappropriate gain.
- 3.2 In 5 of 47 (11%) instances, the *Parent Refusal of Bilingual/ESL Program Services* form was not completely filled out. For example, missing campus administrator signature and dates.
- 3.3 In 3 of 47 (6%) instances the LPAC documentation did not support that the parent denied language services.

Finding 4

We found that out of the 47 students' SPED documentation tested, 21 (45%) did not have evidence that the parental denial of program services were reviewed or discussed during ARD. In addition, an LPAC representative was not present (no signature) in 6 (13%) of the ARDs for the students' documentation tested.

Central office staff interviewed stated there was a need for improvement in the collaboration and coordination of the ARD committee and LPAC to determine appropriate language program and individualized education program (IEP).

Observations

While conducting this audit, observations were made during our audit and determined it is worthy of informing management and the data owner(s)/expert(s), in order for them to make the determination as to how the observation should be addressed.

Observation 1

We found a student with a home language survey dated August 4, 2015, but the student was not tested for language assessment until October 26, 2017. It is critical the District identify ELL students in need of Bilingual/ESL program services in a timely manner, which is 20 days for Texas schools. There is a risk the student did not receive necessary Bilingual/ESL program services as needed, which can impact their academic achievement.

Recommendations and Management Response

A Corrective Action Plan (CAP) outlining the activities to be implemented and signed by District management and leadership was submitted to Internal Audit. All six (6) recommendations made by Internal Audit were incorporated into the CAP. The CAP appears to be sufficient to address the findings outlined in this report.

1

We recommend the District identify an employee with sufficient authority to oversee the implementation of all aspects of the District's Bilingual/ESL program. This employee's duties, should include at a minimum, ensuring there are written procedures addressing:

- I. roles and responsibilities for those involved in providing SPED and Bilingual/ESL programs,
- II. consequences for not complying with procedures,
- III. parental communication,
- IV. monitoring parental denials of Bilingual/ESL program services, and
- V. the process for communicating the aforementioned procedures to all stakeholders.

Management and Leadership Response: Management agreed with the recommendation and incorporated into the CAP as activity 11 in which management agrees to identify an authoritative team.

Person(s) Responsible: Interim Assistant Superintendent, Special Education and Special Services; Executive Director Curriculum and Instruction; Interim Chief CL & DL

Implementation Date: March 30, 2019

2

We recommend the District implement internal controls to ensure it promotes a culture of meaningful communication with parents of SPED/ELL students. The District should develop procedures to ensure parents understand information regarding their children's education. These procedures should include steps the District will take to ensure meaningful communication with parents occurs and is documented.

To ensure that any decision to deny Bilingual/ESL program services by a parent is an informed decision, we recommend the District develop a process that requires the parent of any SPED/ELL student be provided written notice that clearly explains what the child is entitled to receive in both SPED and Bilingual/ESL programs.

In addition, we recommend campuses are required to maintain evidence that a conference took place with parents prior to signing a *Parent Refusal of Bilingual/ESL Program Services* form.

Management and Leadership Response: Management agreed to review and revise as needed its process, agreed with the recommendation, and incorporated into the CAP as activities one (1) and three (3).

Person(s) Responsible: Interim Assistant Superintendent, Special Education and Special Services; Executive Director Curriculum and Instruction; Interim Chief CL & DL

Implementation Date: April 30, 2019

3

We recommend a process be implemented to monitor and follow up on parent denials of Bilingual/ESL program services for SPED/ELL students to ensure parents made an informed decision.

Management and Leadership Response: Management agreed with the recommendation and incorporated into the CAP as activities two (2) and nine (9).

Person(s) Responsible: Interim Assistant Superintendent, Special Education and Special Services; Executive Director Curriculum and Instruction; Interim Chief CL & DL; Director, Special Education; Director Curriculum and Instruction, Special Programs; Director Connecting Languages.

Implementation Date: April 30, 2019

4

We recommend written procedures are created to ensure there is collaboration between LPAC and ARD committees when determining programs for SPED/ELL students. At a minimum, procedures should include controls that ensure an LPAC representative is present at the student's ARD. In addition, require standardized documentation that serves as evidence the parental denial of Bilingual/ESL program services was discussed during the ARD.

Management and Leadership Response: Management agreed to review and revise as needed its process, agreed with the recommendation, and incorporated into the CAP as activities two (2) and five (5). In addition, management and leadership added activity four (4) which reads, "Develop/ refine written processes and procedures for accurate PEIMS Coding and documentation related to SPED/LEP Parent Denials."

Person(s) Responsible: Interim Assistant Superintendent, Special Education and Special Services; Executive Director Curriculum and Instruction; Interim Chief CL & DL

Implementation Date: April 30, 2019

5

We recommend the District provide training to all levels of stakeholders participating in the ARD/LPAC processes (at the District and campus level) on written procedures listed in the above recommendations as soon as these written procedures have been approved. This training should be conducted annually thereafter and be mandatory so all stakeholders understand the complete process, as it is cross-functional between departments and campuses.

Management and Leadership Response: Management agreed to review and revise as needed its process, agreed with the recommendation, and incorporated into the CAP as activities six (6), seven (7), and eight (8).

Person(s) Responsible: Director Special Education and Special Services; Director, Curriculum and Instruction, Special Programs; Director, Connecting Languages; Coordinator EL Compliance.

Implementation Dates: April 30, 2019 and August 30, 2019

6

The District should perform a needs assessment to determine if there are sufficient certified staff to provide Bilingual/ESL program services for SPED/ELL students as required by law. Based on the results of the needs assessment, the District should create a plan to ensure there are sufficient qualified teachers to address needs of the SPED/ELL students in the District.

Management and Leadership Response: Management agreed with the recommendation and incorporated into the CAP as activity 10.

Person(s) Responsible: Interim Assistant Superintendent, Special Education and Special Services; Executive Director Curriculum and Instruction; Interim Chief CL & DL; Executive Director Talent Acquisition & Personnel Administration.

Implementation Date: April 30, 2019

Exhibit A – Criteria

Criteria No.	Criteria Source	Criteria Details	Relevant Findings
1.	TAC Chapter 89. Adaptations for Special Populations Subchapter BB. Commissioner's Rules Concerning State Plan for Educating English Language Learners, §89.1201. Policy.	<p>(a) It is the policy of the state that every student in the state who has a home language other than English and who is identified as an English language learner shall be provided a full opportunity to participate in a bilingual education or English as a second language (ESL) program, as required in the Texas Education Code (TEC), Chapter 29, Subchapter B. To ensure equal educational opportunity, as required in the TEC, §1.002(a), each school district shall:</p> <p>(1) identify English language learners based on criteria established by the state;</p> <p>(2) provide bilingual education and ESL programs, as integral parts of the regular program as described in the TEC, §4.002;</p> <p>(3) seek certified teaching personnel to ensure that English language learners are afforded full opportunity to master the essential knowledge and skills required by the state; and</p> <p>(4) assess achievement for essential knowledge and skills in accordance with the TEC, Chapter 39, to ensure accountability for English language learners and the schools that serve them.</p> <p>(b) The goal of bilingual education programs shall be to enable English language learners to become competent in listening, speaking, reading, and writing in the English language through the development of literacy and academic skills in the primary language and English. Such programs shall emphasize the mastery of English language skills, as well as mathematics, science, and social studies, as integral parts of the academic goals for all students to enable English language learners to participate equitably in school.</p> <p>(c) The goal of ESL programs shall be to enable English language learners to become competent in listening, speaking, reading, and writing in the English language through the integrated use of second language methods. The ESL program shall emphasize the mastery of English language skills, as well as mathematics, science, and social studies, as integral parts of the academic goals for all students to enable English language learners to participate equitably in school.</p> <p>(d) Bilingual education and ESL programs shall be integral parts of the total school program. Such programs shall use instructional approaches designed to meet the special needs of English language learners. The basic curriculum content of the programs shall be based on the essential knowledge and skills required by the state.</p>	1
2.	Chapter 89. Adaptations for Special Populations Subchapter BB. Commissioner's Rules Concerning State Plan for Educating English Language Learners, §89.1201 Policy, §89.1225 Testing and Classification of Students	<p>(4) The admission review and dismissal (ARD) committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and designated level of performance for identifying limited English proficiency as required under subsection (d) of this section for students for whom those tests would be inappropriate as part of the individualized education program (IEP). The decision for entry into a bilingual education or English as a second language program shall be determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee).</p>	4

Criteria No.	Criteria Source	Criteria Details	Relevant Findings
	§89.1203 Definitions	Certified English as a second language teacher--The term "certified English as a second language teacher" as used in this subchapter is synonymous with the term "professional translator/interpreter" used in TEC, §29.063 Language Proficiency Assessment Committees.	
3.	§89.1220 Language Proficiency Assessment Committee	<p>(a) School districts shall by local board policy establish and operate a language proficiency assessment committee. The school district shall have on file policy and procedures for the selection, appointment, and training of members of the language proficiency assessment committee(s).</p> <p>() The language proficiency assessment committee shall give written notice to the student's parent advising that the student has been classified as an English language learner 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.</p> <p>() The student's permanent record shall contain documentation of actions impacting the English learner.</p> <p>(1) Documentation shall include:</p> <ul style="list-style-type: none"> (A) the identification of the student as an English learner; (B) the designation of the student's level of language proficiency; (C) the recommendation of program placement; (D) parental approval of entry or placement into the program; (E) the dates of entry into, and placement within, the program; (F) assessment information as outlined in Chapter 101, Subchapter AA, of this title; (G) additional instructional interventions provided to address the specific language needs of the student; (H) the date of exit from the program and parental approval; (I) the results of monitoring for academic success, including students formerly classified as English learners, as required under the TEC, §29.063(c)(4); and (J) the home language survey 	1
14.	19 Texas Administrative Code (TAC) §89.1225. Testing and Classification of Students.	<p>(a) For identifying English language learners, school 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, an oral language proficiency test approved by the Texas Education Agency (TEA); and (2) in Grades 2-12, a TEA-approved oral language proficiency test and the English reading and English language arts sections from a TEA-approved norm-referenced assessment, or another test approved by the TEA, unless the norm-referenced standardized achievement instrument is not valid in accordance with subsection (f)(2)(C) of this section. (b) School districts that provide a bilingual education program shall administer an oral language proficiency test in the home language of the student who is eligible to be served in the bilingual education program. If the home language of the student is Spanish, the school district shall administer the Spanish version of the Commissioner's Rules Concerning State Plan for Educating English Language Learners §89.BB. May 2012 Update Page 11 TEA-approved oral</p>	1

Criteria No.	Criteria Source	Criteria Details	Relevant Findings
		<p>language proficiency test that was administered in English. If the home language of the student is other than Spanish, the school district shall determine the student's level of proficiency using informal language assessment measures.</p> <p>(g) Within 20 school days of the re-entry enrollment in the school district, students shall be identified as English language learners and enrolled into the required bilingual education or English as a second language program. Prekindergarten and kindergarten students preregistered in the spring shall be identified as English language learners and enrolled in the required bilingual education or English as a second language program within 20 school days of the start of the school year in the fall.</p>	
5.	TEC §29.056 Enrollment of Students in Program	<p>(a) The agency shall establish standardized criteria for the identification, assessment, and classification of students of limited English proficiency eligible for entry into the program or exit from the program. The student's parent must approve a student's entry into the program, exit from the program, or placement in the program. The school district or parent may appeal the decision under Section 29.064. The criteria for identification, assessment, and classification may include:</p> <p>(1) results of a home language survey conducted within four weeks of each student's enrollment to determine the language normally used in the home and the language normally used by the student, conducted in English and the home language, signed by the student's parents if the student is in kindergarten through grade 8 or by the student if the student is in grades 9 through 12, and kept in the student's permanent folder by the language proficiency assessment committee;</p> <p>(2) the results of an agency-approved English language proficiency test administered to a student identified through the home survey as normally speaking a language other than English to determine the level of English language proficiency, with students in kindergarten or grade 1 being administered an oral English proficiency test and students in grades 2 through 12 being administered an oral and written English proficiency test; and</p> <p>(3) the results of an agency-approved proficiency test in the primary language administered to a student identified under Subdivision (2) as being of limited English proficiency to determine the level of primary language proficiency, with students in kindergarten or grade 1 being administered an oral primary language proficiency test and students in grades 2 through 12 being administered an oral and written primary language proficiency test.</p> <p>(b) Tests under Subsection (a) shall be administered by professionals or paraprofessionals with the appropriate English and primary language skills and the training required by the test publisher.</p> <p>(c) The language proficiency assessment committee may classify a student as limited English proficiency if:</p> <p>(1) the student's ability in English is so limited or the student's disabilities are so severe that assessment procedures cannot be administered;</p> <p>(2) the student's score or relative degree of achievement on the agency-approved English proficiency test is below the levels established by the agency as indicative of reasonable proficiency;</p>	3

Criteria No.	Criteria Source	Criteria Details	Relevant Findings
		<p>(3) the student's primary language proficiency score as measured by an agency-approved test is greater than the student's proficiency in English; or</p> <p>(4) the language proficiency assessment committee determines, based on other information, including a teacher evaluation, parent viewpoint, or student interview, that the student's primary language proficiency is greater than the student's proficiency in English or that the student is not reasonably proficient in English.</p> <p>(d) Not later than the 10th day after the date of the student's classification as a student of limited English proficiency, the language proficiency assessment committee shall give written notice of the classification to the student's parent. The notice must be in English and the parent's primary language. The parents of students eligible to participate in the required bilingual education program shall be informed of the benefits of the bilingual education or special language program and that it is an integral part of the school program.</p> <p>(e) The language proficiency assessment committee may retain, for documentation purposes, all records obtained under this section.</p> <p>(f) The district may not refuse to provide instruction in a language other than English to a student solely because the student has a disability.</p> <p>(g) A district may transfer a student of limited English proficiency out of a bilingual education or special language program for the first time or a subsequent time if the student is able to participate equitably in a regular English instruction program as determined by:</p> <p>(1) agency-approved tests administered at the end of each school year to determine the extent to which the student has developed oral and written language proficiency and specific language skills in English;</p> <p>(2) satisfactory performance on the reading assessment instrument under Section 39.023(a) or an English language arts assessment instrument under Section 39.023(c), as applicable, with the assessment instrument administered in English, or, if the student is enrolled in the first or second grade, an achievement score at or above the 40th percentile in the reading and language arts sections of an English standardized test approved by the agency; and</p> <p>(3) agency-approved criterion-referenced tests and the results of a subjective teacher evaluation.</p> <p>(h) If later evidence suggests that a student who has been transferred out of a bilingual education or special language program has inadequate English proficiency and achievement, the language proficiency assessment committee may reenroll the student in the program. Classification of students for reenrollment must be based on the criteria required by this section.</p>	
6.	TAC §89.1230. Eligible Students with Disabilities	(b) Admission, review, and dismissal committee members shall meet in conjunction with language proficiency assessment committee members to review the educational needs of each English language learner who qualifies for services in the special education program.	4
7.	E Paso ISD,	TITLE III REQUIREMENTS A district that receives funds under Title III of the Every Student Succeeds Act shall comply with the statutory requirements	1

Criteria No.	Criteria Source	Criteria Details	Relevant Findings
	EHBE (Legal) Special Programs, Bilingual Education/ESL	<p>regarding English learners and immigrant students. 20 U.S.C. 6801–7014</p> <p>STATE POLICY</p> <p>It is the policy of the state that every student who has a home language other than English and who is identified as an English language learner shall be provided a full opportunity to participate in a bilingual education or English as a second language (ESL) program.</p> <p>DISTRICT RESPONSIBILITY</p> <p>Each district shall:</p> <ol style="list-style-type: none"> 1. Identify English language learners based on criteria established by the state; 2. Provide bilingual education and ESL programs as integral parts of the regular program; 3. Seek certified teaching personnel to ensure that English language learners are afforded full opportunity to master the essential knowledge and skills; and 4. Assess achievement for essential knowledge and skills in accordance with Education Code Chapter 39 to ensure accountability for English language learners and the schools that serve them. Education Code 29.052; 19 TAC 89.1201(a), 1203 	
8.	ESEA 20 U.S.C. §6319(a)	39 SEAs that receive ESEA Title I funds, which currently all SEAs, must ensure that all teachers in core academic subjects, including teachers of EL students, are "highly qualified."	1
9.	Title III, Sec. 3302 Parental Notification	<p>(a) IN GENERAL- Each eligible entity using funds provided under this title to provide a language instruction educational program shall, not later than 30 days after the beginning of the school year, inform a parent or the parents of a limited English proficient child identified for participation in, or participating in, such program of —</p> <ol style="list-style-type: none"> (1) the reasons for the identification of their child as limited English proficient and in need of placement in a language instruction educational program; (2) the child's level of English proficiency, how such level was assessed, and the status of the child's academic achievement; (3) the method of instruction used in the program in which their child is, or will be, participating, and the methods of instruction used in other available programs, including how such programs differ in content, instruction goals, and use of English and a native language in instruction; (4) how the program in which their child is, or will be participating will meet the educational strengths and needs of the child; (5) how such program will specifically help their child learn English, and meet age appropriate academic achievement standards for grade promotion and graduation; (6) the specific exit requirements for such program, the expected rate of transition from such program into classrooms that are not tailored for limited English proficient children, and the expected rate of graduation from secondary school for such program if funds under this title are used for children in secondary schools; 	3

Criteria No.	Criteria Source	Criteria Details	Relevant Findings
		<p>(7) in the case of a child with a disability, how such program meets the objectives of the individualized education program of the child; and</p> <p>(8) information pertaining to parental rights that includes written guidance —</p> <p>(A) detailing —</p> <p>(i) the right that parents have to have their child immediately removed from such program upon their request; and</p> <p>(ii) the options that parents have to decline to enroll their child in such program or to choose another program or method of instruction, if available;...</p>	
10.	(U.S. Department of Justice, Civil Rights Division and U.S. Department of Education, Office for Civil Rights-Dear Colleague Letter: English Learner Students and Limited English Proficient Parents, January 7, 2015)	https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf	1,2, 3, 4



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