



**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand regulations by broadening the assessment options for EB students. Additionally, the proposed rulemaking would increase the number of individuals subject to the rules' applicability by repealing an existing limitation.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Tian has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that all EB students take the appropriate assessments and have access to the available accommodations. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins June 21, 2024, and ends July 22, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the \_\_\_\_\_ on June 21, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendments are proposed under Texas Education Code (TEC), §39.023(a), (b), (c), and (l), which specify the required assessments for students in Grades 3-8, students who are significantly cognitively disabled, students enrolled in high school courses, and students whose primary language is Spanish, respectively; §39.023(m), which authorizes the commissioner to develop procedures for a language proficiency assessment committee to determine which students qualify for an exemption from the administration of required assessments; TEC, §39.025, which establishes the secondary-level performance required to receive a Texas high school diploma; TEC, §39.027, which establishes the parameters by which an Emergent Bilingual (EB) student may be granted an exemption from an assessment instrument, defines recent unschooled immigrants and an unschooled asylee or refugee, and authorizes the commissioner to develop an assessment system to evaluate the English language proficiency of all EB students; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(B) and (b)(2)(G), which

§101.1001. Scope of Rules.

- (a) Except as specified in subsection (b) of this section, the provisions of this division shall apply to all students.
- (b) The provisions of §101.1005(b)(1)-(2) of this title (relating to Assessments of Achievement in Academic Content Areas and Courses) and §101.1007 of this title (relating to Assessment Provisions for Graduation) shall apply beginning with students first enrolled in Grade 9 or below in the 2011-2012 school year.
- (c) For purposes of this subchapter, a student who has been enrolled in a U.S. school for at least 60 consecutive calendar days during a school year is considered to have been enrolled in a U.S. school for that school year.

§101.1003. English Language Proficiency Assessments.

- (a) In Kindergarten-Grade 12, an emergent bilingual (EB) student [~~English learner (EL)~~], as defined by [the] Texas Education Code (TEC) [the] Texas Education Code (TEC), shall be assessed in accordance with the provisions of this subchapter.

- ~~(2) An EB 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 TEC, §39.023(b), if the student meets the participation requirements.~~
- ~~[(1) A Spanish-speaking ELL in Grades 3-5 may be administered the state's Spanish-version assessment if an assessment in Spanish will provide the most appropriate measure of the student's academic progress.]~~
- ~~[(2) An ELL in Grade 3 or higher may be administered the linguistically accommodated English version of the state's mathematics, science, or social studies assessment if:]~~
- ~~[(A) a Spanish-version assessment does not exist or is not the most appropriate measure of the student's academic progress;]~~
- ~~[(B) the student has not yet demonstrated English language proficiency in reading as determined by the assessment under §101.1003 of this title (relating to English Language Proficiency Assessments); and]~~
- ~~[(C) the student has been enrolled in U.S. schools for three school years or less or qualifies as an unshooled asylee or refugee enrolled in U.S. schools for five school years or less.]~~
- ~~[(3) In certain cases, an ELL who receives special education services may, as a result of his or her particular disabling condition, qualify to be administered an alternate assessment instrument based on alternative achievement standards.]~~

(c) In accordance with [the] TEC, §39.027(a), an unshooled asylee 0.48 re4.2 ( ) 027)2.10 TtMC BT50.001.1 (i)2o(e)BDC 0 Td

