



Bilingual Education Exception and English as a Second Language (ESL) Waiver

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1. How do we know if a bilingual education exception needs to be filed? How do we know if an ESL waiver needs to be filed?

TAC Chapter 89.1207 provides bilingual education exception and ESL waiver requirements for all Local Education Agencies (LEAs), which includes all school districts, districts of innovation, and open-enrollment charter schools. The purpose of filing an exception/waiver is to inform the TEA on the needs for appropriately certified teachers in bilingual education and ESL programs across the state.

The following resources walk districts through the process of identifying whether their district needs to file a bilingual education exception or ESL waiver. These resources can be found under “Resources” at the bottom of the [TEA Bilingual Education Exception and ESL Waiver Application webpage](#).

- [Bilingual Education Exception Scenario Chain](#)
- [English as a Second Language \(ESL\) Waiver Scenario Chain](#)

2. Do bilingual education and ESL certification requirements apply to charter schools and districts of innovation (DOI)?

Yes, open-enrollment charter schools and districts of innovation must comply with bilingual education and ESL program certification requirements even if their general certification requirements differ. For the purposes of this FAQ, the term “district” includes all LEAs in alignment with the definition in TAC 89.1203.

Resources:

- [TEA Charter Schools FAQ](#) (Question #7)
- [TEA Districts of Innovation FAQ](#) (Question #9)

3. Do teachers who have an Intern or Probationary certification or Emergency Permit for the appropriate bilingual/ESL certification need to be included in the bilingual education exception or ESL waiver?

Teachers who hold the necessary bilingual education or ESL Probationary or Intern certificate or for whom an Emergency Permit has been obtained (by the district) are appropriately certified for the specified time period and should NOT be added to the respective bilingual education exception or ESL Waiver. This includes teachers who have received an Intern or Probationary certificate under the conditions of the Governor's waivers related to the declaration of emergency (WINT or WPRO) and those for whom the Emergency Permit has been renewed for the 2020-2021 school year. For more information, please see the Intern and Emergency Certification Waiver FAQ on the [TEA COVID-19 Support: Texas Educators](#) webpage.

The [emergency permit](#) process is initiated by the district on behalf of the teacher to ensure that the teacher obtains the permit for the school year in which the teacher will be instructing and prior to the deadline for the November 1st deadline for bilingual exceptions/ESL waivers. A teacher must meet [specific requirements](#) in order to obtain the permit. For questions related to emergency permits, contact TEA Educator Certification using this [Help Desk](#).

4. Does a bilingual education exception or ESL waiver need to be filed for a teacher who has the necessary bilingual or ESL certification but does not have the appropriate content/grade level certification?

Yes. A teacher is only appropriately certified to teach in the bilingual/ESL program if he/she has the necessary bilingual or ESL certification in addition to the appropriate content and grade level for the courses and students he/she instructs.

5. Our teacher that needs to be bilingual or ESL certified to meet state compliance for our bilingual or ESL program has taken and passed the appropriate certification exam(s). Can we leave this teacher off the bilingual exception or ESL waiver?

No. Passing a certification exam does not suffice. The appropriate bilingual or ESL certification must be posted to the teacher's certificate before the November 1st deadline for filing a bilingual exception or ESL waiver. If a teacher is in the process of obtaining the appropriate certification, such as participating in an alternative certification program, and the appropriate certification has not yet been obtained and posted to the teacher's certificate, the teacher would count toward the bilingual exception or ESL waiver.

6. Do special education teachers of English learners need to be bilingual or ESL certified?

If a special education teacher is serving a student in a general education bilingual or ESL classroom through inclusion or a resource time that is not the entire content time, the student still has access to the bilingual or ESL program through the certified classroom teacher, so the special education teacher would **not** need to be bilingual or ESL certified.

If the English learner is served in a self-contained special education classroom where he/she receives all content instruction by the special education teacher, then the teacher of the self-contained special education classroom must also be appropriately certified to

provide bilingual or ESL program services. Therefore, if the self-contained special education teacher in this case is not appropriately certified, a bilingual education exception or ESL waiver would need to be filed for this classroom.

7. For English learners served in an Early Education (EE) setting, where are they indicated on the bilingual education exception/ESL waiver application?

If a bilingual education exception or ESL waiver is needed for English learners served in an EE setting, this data will be included under the prekindergarten (PK) student, classroom, and teacher data on the application.

8. If our Dual Language Immersion (DLI) program in secondary grade levels does not have the appropriately certified teachers, do we need to file a bilingual education exception for those teachers, classrooms, and students?

Yes. Districts required to provide a bilingual education program, per TAC 89.1205 (a), must offer the program through the elementary grades (prekindergarten through fifth grade or sixth grade if clustered with elementary). If the district chooses to extend their bilingual Dual Language Immersion program into the secondary grade levels (middle and high school), the district is also responsible for providing the appropriately certified staff members for the program, per TAC 89.1205 (g).

For detailed guidance on implementing a Dual Language Immersion program at secondary grade levels, see question IV. D-10 in the general [FAQ for English Learners and LPAC](#). For information on TSDS PEIMS coding for students participating in DLI, see this [Code Guide](#).

9. Do long-term substitutes need to be added to the bilingual exception and/or ESL waiver?

The name of a long-term substitute is **not** to be added to the district's documentation of those included in the bilingual education exception or ESL waiver.

- If the long-term substitute is covering a vacant position that is supposed to have a bilingual or ESL certified teacher, the vacant position is counted within the district's bilingual education exception or ESL waiver application. The students under this vacant position who are being instructed by the long-term substitute will be coded under an Alternative Language Program.
- If the long-term substitute is covering for a classroom teacher who is appropriately certified for the bilingual education or ESL program but is currently on leave, the teacher's classroom and students are not added to the bilingual education exception or ESL waiver. The students in this teacher's classroom who are being instructed by the long-term substitute will be coded under the appropriate bilingual or ESL program.
- If the long-term substitute is covering for a classroom teacher who is not appropriately certified for the bilingual education or ESL program and is currently on leave, the full-time teacher's classroom and students are counted within the district's bilingual education exception or ESL waiver. The students under this this classroom teacher who are being instructed by the long-term substitute will be coded under an Alternative Language Program.

10. Do we need to wait until our district submits the bilingual education exception or ESL waiver on November 1st to code the students as Alternative Language Program?No. In anticipation of filing the bilingual education exception or ESL waiver, enter the participating students' program code based on the instructional arrangement, which is the students being served through the district's alternative language program as the district

works to fulfill the appropriate certification requirements of the teacher(s) under the exception/waiver.

11. If a teacher is under a bilingual education exception and is also not ESL certified, what TSDS PEIMS Parental Permission code should the campus use for this teacher’s students? Should this teacher be under both a bilingual exception and an ESL waiver?

If a teacher is under a bilingual exception, he or she would not also be under an ESL waiver. The fact that the teacher is not ESL certified would be mentioned on the bilingual exception application as part of the information on the district’s alternative language program plan. The students’ Parental Permission codes would be (E) since the district has filed a bilingual education exception, and the program codes would be Alternative Language Program (01) since the students are in an alternative plan from a bilingual education exception. The Program Type codes for Bilingual and ESL would be (0).

Resource: [TSDS Web-Enabled Data Standards](#)

12. If a teacher who was included in the bilingual education exception or ESL waiver application on or before November 1st obtains his or her appropriate certification during the school year, should the PEIMS codes of his/her students participating in the bilingual education or ESL program be changed immediately or at the start of the next school year?

At the time that the teacher becomes appropriately certified for the bilingual education or ESL program, the district will adjust the students’ [TSDS PEIMS codes](#) accordingly. The following PEIMS codes for students participating in a bilingual or ESL program are affected by the submission of a district’s bilingual education exception and/or ESL waiver and would be adjusted **as described in the charts below (continued on next page)**:

English Learner (EL) PEIMS Coding			
While Teacher is Under Bilingual Education Exception or ESL Waiver		Once Teacher is Appropriately Certified for the Bilingual Education or ESL Program	
Parental Permission Code	ESL = J Bilingual = E	Parental Permission Code	ESL = K Bilingual = D
Program Code	ESL = 0 and Alternative Language Program = 02	Program Code	ESL = • Content-Based: 2 • Pull-Out: 3
	Bilingual = 0 and Alternative Language Program = 01		Bilingual = • Transitional Early Exit: 2 • Transitional Late Exit: 3 • Dual Language Immersion Two-Way: 4 • Dual Language Immersion One-Way: 5
Bilingual / ESL Funding Code	Alternative Language Program for ESL = BE	Bilingual / ESL Funding Code	ESL = BE (no change)
	Alternative Language Program for Bilingual = BE		Bilingual = • Transitional Early Exit and Transitional Late Exit: BE (no change) • Dual Language Immersion Two-Way: D1 • Dual Language Immersion One-Way: D2

English Proficient (EP) Student PEIMS Coding			
While Teacher is Under Bilingual Education Exception or ESL Waiver		Once Teacher is Appropriately Certified for the Bilingual Education or ESL Program	
Parental Permission Code	EP in ESL = H	Parental Permission Code	EP in ESL = H (no change)
	EP in Bilingual = 3		EP in Bilingual = 3 (no change)
	Reclassified EP in ESL or Bilingual = G		Reclassified EP in ESL or Bilingual = G (no change)
Program Code	ESL = 0 and Alternative Language Program = 02	Program Code	ESL = • Content-Based: 2 • Pull-Out: 3
	Bilingual = 0 and Alternative Language Program = 01		Bilingual = • Transitional Early Exit: 2 • Transitional Late Exit: 3 • Dual Language Immersion Two-Way: 4 • Dual Language Immersion One-Way: 5
Bilingual / ESL Funding Code	Alternative Language Program for ESL = N/A	Bilingual / ESL Funding Code	ESL = N/A (no change)
	Alternative Language Program for Bilingual = N/A		Bilingual = • Transitional Early Exit and Transitional Late Exit: N/A (no change) • Dual Language Immersion Two-Way: D1 • Dual Language Immersion One-Way: D2

Further detail on TSDS PEIMS coding is provided in the Bilingual ESL Program Association [Code Guide](#).

13. What if our district is filing a bilingual education exception and has not yet begun development of the bilingual program, particularly when applying for an exception for languages other than Spanish?

Overall, the bilingual education exception includes two basic types of exception scenarios:

- 1) A district has a bilingual education program (in any language) and is only missing one or more of the appropriately certified teacher(s).
- 2) The district has met the requirement for providing a bilingual program (in any language) but has not yet begun the bilingual education program in the district at any grade level.

In the second scenario above, the district is planning for the number of classrooms and teachers that would be needed in order to provide the bilingual education program for the amount of English learners (ELs) with that language classification and calculates accordingly, likely by clustering the ELs with that language classification and based on appropriate teacher/student ratios.

In any language for which the district meets the minimum requirement to provide the bilingual education program but does not have the appropriately certified teachers to provide the program, a bilingual education exception is filed for that language. Of course, it is recognized that there are many languages for which a district may meet this requirement that a language certification is not yet available. The following are the languages for which

there are currently bilingual education certification exams as found in TAC §233.6 and as described in this [test requirements chart](#):

- Spanish
- American Sign Language
- Arabic
- Chinese
- Japanese
- Vietnamese

Please note the following regarding submission of the bilingual education exception and TSDS PEIMS coding as it relates to Spanish and languages other than Spanish:

- As stated above, **the bilingual education exception will be filed regardless of language classification or availability of a language certification exam.**
- **For Spanish**, if the district has not yet established the bilingual education program for which they are now required, the English learners who would be eligible for the Spanish/English bilingual education program will be coded as an E for Parental Permission (indicating that the exception was filed) and 01 for Alternative Language Program to the bilingual education program.
- **For languages other than Spanish**, if the district has not yet established the bilingual education program for which they are now required, the English learners who would be eligible for that language’s bilingual education program will be placed in an ESL program and coded in PEIMS as such (K for Parental Permission and either 2 or 3 for ESL Program based on the district’s implementation of a content-based or pull-out model).

14. If our district applies for a bilingual education exception and/or ESL waiver and the English learners are served under an Alternative Language Program, are Bilingual Education Allotment (BEA) funds still generated?

Yes. English learners participating in an Alternative Language Program (01 or 02) generate BEA funds at a 0.1 weight. Keep in mind that program participation codes are reported for individual students, and only those who are in classrooms under an exception/waiver are coded as participating in an Alternative Language Program. So, program participation and the associated BEA funds are based on each student’s instructional arrangement and teacher’s certification. See the chart below for details, and for more information on BE-ESL Associated TSDS Coding, see this [Code Guide](#).

LEP/EL Indicator Code	Bilingual/ESL Funding Code	Funding Weight
LEP/EL	BE: (ESL, Transitional Bilingual, or Alternative Language Program)	0.10
LEP/EL	D1: (Dual Language One-Way)	0.15
LEP/EL	D2: (Dual Language Two-Way)	0.15
Non-LEP/English Proficient	N/A: (ESL, Transitional Bilingual, Alternative Language Program, or Dual Language One-Way)	0
Non-LEP/English Proficient	D2: (Dual Language Two-Way)	0.05

15. What is the Comprehensive Professional Development (PD) Plan, and how is it funded?

TAC Chapter 89.1207 (a)(1)(D) and (b)(1)(D) explain the assurance for districts who file a bilingual education exception and/or ESL waiver to implement a comprehensive PD plan. This plan is not included in the bilingual exception or ESL waiver application but shall be maintained at the district level.

Although the target audience of the comprehensive PD plan is the teacher(s) under the bilingual exception and/or ESL waiver, additional teachers can participate in the professional development activities as available.

TAC Chapter 89.1207 (a)(1)(E) and (b)(1)(E) explain the assurance for districts who file a bilingual education exception and/or ESL waiver to utilize a total of at least 10% of the bilingual education allotment (BEA) to fund their comprehensive PD plan, whether applying for the exception, waiver, or both.

- The 10% to fund the comprehensive PD plan is taken from the total BEA funds that the district generates.
- The 10% of BEA funds for the comprehensive PD plan does not include recruitment efforts. Recruitment efforts are an allowable use of BEA funds that are not within the 10% for the comprehensive PD plan.

Resource: [Allowable Use of Bilingual Education Allotment \(BEA\) Funds Comprehensive Professional Development Plan](#): explains how districts who submit a bilingual exception and/or ESL waiver can utilize BEA funds for their comprehensive professional development plan. This document can be found under “Resources” at the bottom of the [TEA Bilingual Education Exception and ESL Waiver Application webpage](#).

16. If our district is submitting for both a bilingual education exception and an ESL waiver application, can we consolidate the comprehensive professional development (PD) plan into one combined document, or do we have to have a separate plan for each?

Districts who have submitted a bilingual exception and an ESL waiver can consolidate the comprehensive PD plan into one document as long as the district differentiates clearly the plan for teachers under the exception and the plan for teachers under the waiver.