Chapter 89. Adaptations for Special Populations

Subchapter AA. Commissioner's Rules Concerning Special Education Services

Division 1. General Provisions

§89.1001. Scope and Applicability.

(a) Special education and related services shall be provided to eligible students in accordance with all applicable federal law and regulations, state statutes, rules of the State Board of Education, State Board for Educator Certification, and commissioner of education, and the Individuals with Disabilities Education Act (IDEA).

(b) Education programs under the direction and control of the Texas Juvenile Justice Department, Texas School for the Blind and Visually Impaired, Texas School for the Deaf, and schools within the Texas Department of Criminal Justice shall comply with state and federal law and regulations concerning the delivery of special education and related services to eligible students and shall be monitored by the Texas Education Agency in accordance with the requirements identified in subsection (a) of this section.

(c) Residential facility refers to a facility defined by Texas Education Code, §5.001(8), which includes any person, facility, or entity that provides 24-hour custody or care of a person residing in the facility for detention, treatment, foster care, or any noneducational purpose. A school district must initiate Child Find outreach activities to locate, evaluate, and identify eligible students in any residential facility within its boundaries. If a student is eligible, a school district must provide the required special education and related services to the student unless, after contacting the facility to offer those services to eligible students with disabilities, the facility can demonstrate that the services are provided by another educational program provider, such as a charter school, approved nonpublic school, or a facility operated private school. However, the district shall, at minimum, contact the facility at least twice per year to conduct Child Find activities and to offer services to eligible students with disabilities.

Statutory Authority: The provisions of this §89.1001 issued under Texas Education Code, §§29.001,29.003, 29.005, 29.012. 29.013, 29.014, 30.002, 30.003,30.005, 30.021, 30.051, 30.057, and 30.083, and 34 Code of Federal Regulations, §§300.8, 300.101, 300.111, 300.121, 300.124, 300.129, 300.147, 300.149, 300.500, and 300.600.

Source: The provisions of this §89.1001 adopted to be effective September 1, 1996, 21 TexReg 7240; amended to be effective March 6, 2001, 26 TexReg 1837; amended to be effective March 14, 2021, 46 TexReg 1466; amended to be effective August 22, 2024, 49 TexReg 2910.

§89.1005. Instructional Arrangements and Settings.

(a) The following terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Instructional arrangement/setting. Instructional arrangement/setting refers to the arrangement listed in Texas Education Code (TEC), §48.102, and the weight assigned to it that is used to generate funds from the state special education allotment.

(2) Instructional day. Instructional day has the meaning assigned to it in §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook).

(b) Each school district must provide special education and related services to eligible students with disabilities in order to meet the unique needs of those students in accordance with 34 Code of Federal Regulations, §§300.114-300.118, and state law.

(c) Subject to §89.1075(f) of this title (relating to General Program Requirements and Local District Procedures), for the purpose of determining the student's instructional arrangement/setting, a student receiving special education and related services must have available an instructional day commensurate with that of students who are not receiving special education and related services and only modify the instructional day when determined necessary by the admission, review, and dismissal (ARD) committee. A student's ARD committee shall determine the student's instructional arrangement/setting based on the

percentage of the student's instructional day that the student receives special education and related services in a setting other than general education.

(d) While this section uses the names of the instructional arrangements/settings as they are described in TEC, §48.102, there may be additional instructional arrangement/setting codes that are created by the Texas Education Agency (TEA) within the student attendance accounting requirements defined in §129.1025 of this title. While the codes may be titled differently, each will align to an arrangement/setting as described in this section and in TEC, §48.102.

(e) Instructional arrangements/settings shall be based on the individual needs and individualized education programs (IEPs) of eligible students receiving special education and related services and shall include the following.

(1) Mainstream. This instructional arrangement/setting is for providing special education and related services to a student in the general education classroom in accordance with the student's IEP. Qualified special education personnel must be involved in the implementation of the student's IEP through the provision of direct, indirect, and/or support services to the student and/or the student's general education classroom teacher(s) necessary to enrich the general education classroom and enable student success. The student's IEP must specify the services that will be provided by qualified special education personnel to enable the student to appropriately progress in the general education curriculum and/or appropriately advance in achieving the goals set out in the student's IEP. Examples of services provided in this instructional arrangement include, but are not limited to, direct instruction, helping teacher, team teaching, co-teaching, interpreter, educational aides, curricular or instructional modifications/accommodations, special materials/equipment, positive classroom behavioral interventions and supports, consultation with the student and his/her general education classroom teacher(s) regarding the student's progress in general education classes, staff development, and reduction of ratio of students to instructional staff. Monitoring student progress in and of itself is not a special education service; this cannot be listed as the only specially designed instruction documented in a student's IEP.

(2) Homebound. This instructional arrangement/setting, also referred to as home-based instruction, is for providing special education and related services to students who are served at their home for the following reasons.

(A) Medical reasons. Homebound instruction is used for a student whose ARD committee has received medical documentation from a physician licensed to practice in the United States that the student is expected to incur full-day absences from school for a minimum of four weeks for medical reasons, which could include psychological disorders, and the ARD committee has determined that this is the most appropriate placement for the student. The weeks do not have to be consecutive. For the ARD committee to approve this placement, the committee will review documentation related to anticipated periods of student confinement to the home, as well as whether the student is determined to be chronically ill or any other unique medical circumstances that would require this placement in order to provide a free appropriate public education (FAPE) to the student. Documentation by a physician does not guarantee the placement of a student in this instructional arrangement/setting, as the student's ARD committee shall determine whether the placement is necessary for the provision of FAPE, and, if so, will determine the amount of services to be provided to the student at home in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in subsection (c) of this section.

(B) Children ages three through five years of age. Home-based instruction may be used for children ages three through five when determined appropriate by the child's ARD committee and as documented in the student's IEP. While this setting would generate the same weight as the homebound instructional arrangement/setting, the data on this setting may be collected differently than the medical homebound arrangement/setting.

(C) Students confined to or educated in hospitals. This instructional arrangement/setting also applies to school districts described in TEC, §29.014.

(3) Hospital class. This instructional arrangement/setting is for providing special education and related services by school district personnel:

(A) at a hospital or other medical facility; or

(B) at a residential care and treatment facility not operated by the school district. If a student residing in the facility is provided special education and related services at a school district campus but the student's parent is not a school district resident, the student is considered to be in the residential care and treatment facility instructional arrangement/setting. If a student residing in the facility is provided special education and related services at a school district campus and the parent, including a surrogate parent, is a school district resident, the student's instructional arrangement/setting would be assigned based on the services that are provided at the campus on the same basis as a resident student residing with his or her parents.

(4) Speech therapy. This instructional arrangement/setting is for providing speech therapy services whether in a general education classroom or in a setting other than a general education classroom.

(A) When the only special education service provided to a student is speech therapy, then this instructional arrangement may not be combined with any other instructional arrangement. If a student's IEP indicates that a special education teacher is involved in the implementation of the student's IEP but there is no indication of how that teacher provides a special education service, the student is in the speech therapy instructional arrangement/setting.

(B) When a student receives speech therapy and a related service but no other special education service, the student is in the speech therapy instructional arrangement/setting.

(5) Resource room/services. This instructional arrangement/setting is for providing special education and related services to a student in a setting other than general education for less than 50% of the regular school day. For funding purposes, this will be differentiated between the provision of special education and related services to a student in a setting other than general education for less than 21% of the instructional day and special education and related services provided to a student in a setting other than general education for at least 21% of the instructional day but less than 50% of the instructional day.

(6) Self-contained (mild, moderate, or severe) regular campus. This instructional arrangement/setting is for providing special education and related services to a student who is in a setting other than general education for 50% or more of the regular school day on a regular school campus. For funding purposes, mild/moderate will be considered at least 50% but no more than 60% of the student's instructional day, and severe will be considered more than 60% of the student's instructional day.

(7) Off-home campus. This instructional arrangement/setting is for providing special education and related services to the following:

(A) a student at South Texas Independent School District or Windham School District;

(B) a student who is one of a group of students from one or more school districts served in a single location in another school district when a FAPE is not available in the sending district;

(C) a student in a community setting, facility, or environment operated by a school district that prepares the student for postsecondary education/training, competitive integrated employment, and/or independent living in coordination with the student's individual transition goals and objectives;

(D) a student in a community setting or environment not operated by a school district that prepares the student for postsecondary education/training, competitive integrated employment, and/or independent living in coordination with the student's individual transition goals, with regularly scheduled instruction or direct involvement provided by school district personnel;

(E) a student in a facility not operated by a school district with instruction provided by school district personnel; or

(F) a student in a self-contained program at a separate campus operated by the school district that provides only special education and related services.

(8) Nonpublic day school. This instructional arrangement/setting is for providing special education and related services to students through a contractual agreement with a nonpublic school when the school district is unable to provide a FAPE for the student. This instructional arrangement/setting includes the providers listed in §89.1094 of this title (relating to Contracting for Nonpublic or Non-District Operated Day Placements for the Provision of FAPE).

(9) Vocational adjustment class. Although referred to as a class, this instructional arrangement/setting is a support program for providing special education and related services to a student who is placed on a job (paid or unpaid unless otherwise prohibited by law) with regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP. This instructional arrangement/setting shall be used in conjunction with the student's transition plan, as documented in the student's IEP, and may include special education services received in career and technical education work-based learning programs.

(10) Residential care and treatment facility (not school district resident). For purposes of this section, residential care and treatment facility refers to a facility at which a student with a disability currently resides, who was not placed at the facility by the student's ARD committee, and whose parent or guardian does not reside in the district providing educational services to the student. This instructional arrangement/setting is for providing special education and related services to a student on a school district campus who resides in a residential care and treatment facility and whose parents do not reside within the boundaries of the school district that is providing educational services to the student. If the instruction is provided at the facility, rather than on a school district campus, the instructional arrangement is considered to be the hospital class arrangement/setting rather than this instructional arrangement, or if the student resides at a state-supported living center, the instructional arrangement will be considered the state school arrangement/setting. Students with disabilities who reside in these facilities may be included in the average daily attendance of the district in the same way as all other students receiving special education.

(11) State-supported living center (referred to as state school in TEC, §48.102). This instructional arrangement/setting is for providing special education and related services to a student who resides at a state-supported living center when the services are provided at the state-supported living center location. If services are provided on a local school district campus, the student is considered to be served in the residential care and treatment facility arrangement/setting.

(f) Children from birth through the age of two with visual impairments (VI), who are deaf or hard of hearing (DHH), or who are deaf blind (DB) must be enrolled at the parent's request by a school district when the district becomes aware of a child needing services. The appropriate instructional arrangement for students from birth through the age of two with VI, DHH, or DB shall be determined in accordance with the individualized family services plan, current attendance guidelines, and the agreement memorandum between TEA and Texas Health and Human Services Commission Early Childhood Intervention (ECI) Services. However, the following guidelines shall apply.

(1) A home-based instructional arrangement/setting is used when the child receives services at home. This arrangement/setting would generate the same weight as the homebound instructional arrangement/setting, and average daily attendance (ADA) funding will depend on the number of hours served per week.

(2) A center-based instructional arrangement/setting is used when the child receives services in a day care center, rehabilitation center, or other school/facility contracted with the Health and Human Services Commission (HHSC) as an ECI provider/program. This arrangement/setting would generate the same weight as the self-contained, severe instructional arrangement/setting, and ADA funding will depend on the number of hours served per week.

(3) Funding may only be claimed if the district is involved in the provision of the ECI and other support services for the child. Otherwise, the child would be enrolled and indicated as not in membership for purposes of funding. If the district is contracted with HHSC as an ECI provider, funding would be generated under that contract.

(g) For nonpublic day and residential placements, the school district must comply with the requirements under §89.1092 of this title (relating to Contracting for Nonpublic Residential Placements for the Provision of a Free Appropriate Public Education (FAPE)) or §89.1094 of this title, as appropriate.

(h) Other program options that may be considered for the delivery of special education and related services to a student may include the following:

(1) contracts with other school districts; and

(2) other program options as approved by TEA.

Statutory Authority: The provisions of this §89.1005 issued under Texas Education Code, §29.001 and §48.102, and 34 Code of Federal Regulations, §300.115.

Source: The provisions of this §89.1005 adopted to be effective March 14, 2021, 46 TexReg 1466; amended to be effective October 5, 2021, 46 TexReg 6533; amended to be effective August 22, 2024, 49 TexReg 2910.

Division 2. Clarification of Provisions in Federal Regulations and State Law

§89.1011. Full Individual and Initial Evaluation.

(a) Referral of students for a full individual and initial evaluation (FIIE) for possible special education and related services must be a part of the school district's multi-tiered system of academic and behavioral supports. Students not making progress in the general education classroom should be considered for all interventions and support services available to all students, such as tutorial; compensatory; response to evidence-based intervention; and other academic or behavior support services. The school district cannot require a student to participate in interventions and support services for any specific length of time prior to a referral being made or an FIIE being conducted. If the student continues to experience difficulty in the general education classroom with the provision of interventions and support services or at any time district personnel suspect a disability and a possible need for special education and related services, district personnel must refer the student for an FIIE. A referral or request for an FIIE may be initiated at any time by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student. While an FIIE is being conducted, a student must continue to receive any necessary interventions and support services to target their academic or behavioral needs.

(b) If a parent submits a written request to a school district's director of special education services or to a district administrative employee, such as a campus principal, for an FIIE of a student, the school district must, not later than the 15th school day after the date the district receives the request:

(1) provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; a copy of the Overview of Special Education for Parents form created by the Texas Education Agency (TEA); and an opportunity to give written consent for the evaluation; or

(2) provide the parent with prior written notice of its refusal to conduct an evaluation consistent with 34 CFR, §300.503; a copy of the Overview of Special Education for Parents form created by TEA; and a copy of the procedural safeguards notice required by 34 CFR, §300.504.

(c) When a school district initiates the referral for an FIIE of a student, the district must provide the parent with the information and materials described in subsection (b)(1) of this section.

(d) Except as otherwise provided in this section, a written report of an FIIE of a student must be completed as follows:

(1) not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent, except that if a student has been absent from school during that period on three or more school days, that period must be extended by a number

of school days equal to the number of school days during that period on which the student has been absent; or

(2) for students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or home school setting, not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent.

(e) Notwithstanding the timelines in subsections (d) and (g) of this section, if the school district received the written consent for the evaluation from the student's parent:

(1) at least 35 but less than 45 school days before the last instructional day of the school year, the written report of an FIIE of a student must be provided to the student's parent not later than June 30 of that year;

(2) at least 35 but less than 45 school days before the last instructional day of the school year but the student was absent three or more school days between the time that the school district received written consent and the last instructional day of the school year, the timeline in subsection (d)(1) of this section applies to the date the written report of the FIIE must be completed; or

(3) less than 35 school days before the last day of the school year, the timeline in subsection (d)(1) of this section applies to the date the written report of the FIIE must be completed.

(f) If a student was in the process of being evaluated for special education eligibility by a school district and enrolls in another school district before the previous school district completed the FIIE, the new school district must coordinate with the previous school district as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation in accordance with 34 CFR, §300.301(d)(2) and (e) and §300.304(c)(5). The timelines in subsections (d) and (g) of this section do not apply in such a situation if:

(1) the new school district is making sufficient progress to ensure a prompt completion of the evaluation; and

(2) the parent and the new school district agree to a specific time when the evaluation will be completed.

(g) The admission, review, and dismissal (ARD) committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, individualized education program (IEP) and placement within 30 calendar days from the date of the completion of the written FIIE report. If the 30th day falls during the summer and school is not in session, the ARD committee must meet not later than the 15th school day of the following school year to finalize decisions concerning the student's initial eligibility determination, and, if appropriate, IEP and placement. If the 30th day falls during the summer and school is not in session but an FIIE report indicates that the student would need extended school year services during that summer, the ARD committee must meet as expeditiously as possible after completion of the report.

(h) A copy of the written FIIE report must be provided to the parent as soon as possible after completion of the report but no later than five school days prior to the initial ARD committee meeting, which will determine a student's initial eligibility under subsection (g) of this section, or not later than June 30 if subsection (e)(1) of this section applies.

(i) For purposes of subsections (b), (d), (e), and (g) of this section, school day does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term. In the case of a school that operates under a school year calendar without spring and fall terms, a school day does not include a day that falls after the last instructional day of one school year and before the first instructional day of the subsequent school year.

(j) For purposes of subsections (d)(1) and (e) of this section, a student is considered absent for the school day if the student is not in attendance at the school's official attendance taking time or alternative attendance taking time as described in the *Student Attendance Accounting Handbook*, adopted by reference under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook).

Statutory Authority: The provisions of this §89.1011 issued under Texas Education Code, §§29.001, 29.003, §29.004, 29.005, 29.008, 29.010, 29.012, 29.013, 29.014, 30.002, 30.003, 30.005, 30.021, 30.051, 30.057, 30.083,

30.087, 39A.001, 39A.002, and 48.102, and 34 Code of Federal Regulations (CFR), §§300.8, 300.101, 300.111, 300.114, 300.115, 300.116, 300.121, 300.124, 300.129, 300.147, 300.149, 300.201, 300.500, and 300.600.

Source: The provisions of this §89.1011 adopted to be effective September 1, 1996, 21 TexReg 7240; amended to be effective March 6, 2001, 26 TexReg 1837; amended to be effective November 16, 2003, 28 TexReg 9830; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective January 1, 2015, 39 TexReg 10446; amended to be effective February 15, 2018, 43 TexReg 763; amended to be effective March 14, 2021, 46 TexReg 1466; amended to be effective July 30, 2024, 49 TexReg 5507.

§89.1035. Age Ranges for Student Eligibility.

(a) Pursuant to state and federal law, services provided in accordance with this subchapter must be available to all eligible students ages 3-21. Services will be made available to eligible students on their third birthday. Graduation with a regular high school diploma pursuant to §89.1070(b)(1), (b)(3)(D), (f)(1), (f)(2), (f)(3), or (f)(4)(D) of this title (relating to Graduation Requirements) terminates a student's eligibility to receive services in accordance with this subchapter. An eligible student receiving special education services who is 21 years of age on September 1 of a school year will be eligible for services through the end of that school year or until graduation with a regular high school diploma pursuant to §89.1070(b)(1), (b)(3)(D), (f)(1), (f)(2), (f)(3), or (f)(4)(D) of this title, whichever comes first.

(b) In accordance with the Texas Education Code (TEC), §§29.003, 30.002(a), and 30.081, a free appropriate public education must be available from birth to students with visual impairments or who are deaf or hard of hearing.

Statutory Authority: The provisions of this §89.1035 issued under Texas Education Code, §§29.001, 29.003, 30.002, and 30.081, and 34 Code of Federal Regulations, §§300.100, 300.101, and 300.111.

Source: The provisions of this §89.1035 adopted to be effective September 1, 1996, 21 TexReg 7240; amended to be effective March 6, 2001, 26 TexReg 1837; amended to be effective December 2, 2015, 40 TexReg 8642; amended to be effective March 14, 2021, 46 TexReg 1466; amended to be effective October 5, 2021, 46 TexReg 6533.

§89.1040. Eligibility Criteria.

(a) Special education and related services. To be eligible to receive special education and related services, a student must be a "child with a disability," as defined in 34 Code of Federal Regulations (CFR), §300.8(a), subject to the provisions of 34 CFR, §300.8(c), the Texas Education Code (TEC), Subchapter A, and this section. The provisions in this section specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law.

(b) Eligibility determination. The determination of whether a student is eligible for special education and related services is made by the student's admission, review, and dismissal committee. Any evaluation or re-evaluation of a student must be conducted in accordance with 34 CFR, §§300.301-300.306 and 300.122. The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility must include, but is not limited to, the following:

(1) a licensed specialist in school psychology (LSSP)/school psychologist, an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability; or

(2) a licensed or certified professional for a specific eligibility category defined in subsection (c) of this section.

(c) Eligibility definitions.

(1) Autism. A student with autism is one who has been determined to meet the criteria for autism as stated in 34 CFR, §300.8(c)(1). A determination of whether a student meets the criteria for autism as stated in 34 CFR, §300.8(c)(1), cannot require that the student meets the requirements for a medical/psychological diagnosis of autism. The absence of other characteristics often associated with autism listed in 34 CFR, 300.8(c)(1), does not exclude a student from meeting eligibility as a student with autism. The team's written report of evaluation must include specific recommendations for communication, social interaction, and positive behavioral interventions and strategies.

(2) Deaf-blindness. A student with deaf-blindness is one who has been determined to meet the criteria for deaf-blindness as stated in 34 CFR, §300.8(c)(2). In meeting the criteria stated in 34 CFR, §300.8(c)(2), a student with deaf-blindness is one who, based on the evaluations specified in subsection (c)(3) and (12) of this section:

(A) meets the eligibility criteria for a student who is deaf or hard of hearing specified in subsection (c)(3) of this section and visual impairment specified in subsection (c)(12) of this section;

(B) meets the eligibility criteria for a student with a visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, but a speech/language therapist, a certified speech and language therapist, or a licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected;

(C) has documented hearing and visual losses that, if considered individually, may not meet the requirements for a student who is deaf or hard of hearing or for visual impairment, but the combination of such losses adversely affects the student's educational performance; or

(D) has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that, without the provision of special education services, will adversely affect the student's educational performance.

(3) Deaf or hard of hearing.

(A) A student who is deaf or hard of hearing is one who has been determined to meet the criteria for deafness as stated in 34 CFR, §300.8(c)(3), or for students who have a hearing impairment as stated in 34 CFR, §300.8(c)(5). The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility based on being deaf or hard of hearing must include an audiological evaluation performed by a licensed audiologist and a communication assessment completed by the multidisciplinary team. The evaluation data must include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended hearing assistive technology.

(B) A child under three years of age meets the criteria for deaf or hard of hearing if the student's record indicates that the child is experiencing a developmental delay because of hearing loss or impairment, or the child has a physical or mental condition that has a high probability of resulting in a developmental delay and a sensory impairment, in accordance with 34 CFR, §303.21.

(4) Emotional disability. A student with an emotional disability is one who has been determined to meet the criteria for emotional disturbance as stated in 34 CFR, §300.8(c)(4). The written report of evaluation must include specific recommendations for positive behavioral supports and interventions. The term emotional disability is synonymous with the term emotional disturbance and serious emotional disturbance, as these terms are used in federal or state law pertaining to students eligible for special education and related services.

(5) Intellectual disability. A student with an intellectual disability is one who has been determined to meet the criteria for an intellectual disability as stated in 34 CFR, §300.8(c)(6). In meeting the criteria stated in 34 CFR, §300.8(c)(6), a student with an intellectual disability is one who:

(A) has been determined to have significantly sub-average intellectual functioning as measured by a standardized, individually administered test of cognitive ability in which the overall test score is at least two standard deviations below the mean, when taking into consideration the standard error of measurement of the test; and

(B) concurrently exhibits deficits in at least two of the following areas of adaptive behavior: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.

(6) Multiple disabilities.

(A) A student with multiple disabilities is one who has been determined to meet the criteria for multiple disabilities as stated in 34 CFR, §300.8(c)(7). In meeting the criteria stated in 34 CFR, §300.8(c)(7), that a combination of impairments causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments, a student with multiple disabilities is one who has a combination of disabilities defined in this section and who meets all of the following conditions:

(i) the student's disabilities are expected to continue indefinitely; and

(ii) the disabilities severely impair performance in two or more of the following areas:

(I) psychomotor skills;

(II) self-care skills;

(III) communication;

(IV) social and emotional development; or

(V) cognition.

(B) Students who have more than one of the disabilities defined in this section but who do not meet the criteria in subparagraph (A) of this paragraph must not be classified or reported as having multiple disabilities.

(C) Multiple disabilities does not include deaf-blindness.

(7) Orthopedic impairment. A student with an orthopedic impairment is one who has been determined to meet the criteria for orthopedic impairment as stated in 34 CFR, §300.8(c)(8). A student's eligibility based on an orthopedic impairment must include a medical diagnosis provided by a licensed physician.

(8) Other health impairment. A student with other health impairment is one who has been determined to meet the criteria for other health impairment due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Disorder as stated in 34 CFR, §300.8(c)(9). A student's eligibility based on other health impairment must include identification or confirmation of the student's chronic or acute health problem provided by a licensed physician, a physician assistant, or an advanced practice registered nurse with authority delegated under Texas Occupations Code, Chapter 157.

(9) Specific learning disability.

(A) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; intellectual disability; emotional disability; or environmental, cultural, or economic disadvantage.

(B) A student with a specific learning disability is one who:

(i) has been determined through a variety of assessment tools and strategies to meet the criteria for a specific learning disability as stated in 34 CFR, §300.8(c)(10), in accordance with the provisions in 34 CFR, §§300.307-300.311;

(ii) when provided with learning experiences and instruction appropriate for the student's age or state-approved grade-level standards as indicated by performance on multiple measures such as in-class tests, grade average over time (e.g. six weeks or semester), repeated performance on progress monitoring measures, norm- or criterion-referenced tests, and statewide assessments, does

not achieve adequately for the student's age or to meet state-approved grade-level standards in one or more of the following areas:

(I) oral expression;

(II) listening comprehension;

(III) written expression, which may include dysgraphia;

(IV) basic reading skill, which may include dyslexia;

(V) reading fluency skills, which may include dyslexia;

(VI) reading comprehension;

(VII) mathematics calculation; or

(VIII) mathematics problem solving;

(iii) meets one of the following criteria:

(I) does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in clause (ii)(I)-(VIII) of this subparagraph when using a process based on the student's response to scientific, research-based intervention; or

(II) exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, state-approved grade-level standards, or intellectual development that is determined to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 CFR, §300.304 and §300.305; and

(iv) does not meet the findings under clauses (ii) and (iii) of this subparagraph primarily as the result of:

(I) a visual, hearing, or motor disability;

(II) an intellectual disability;

(III) emotional disability;

(IV) cultural factors;

(V) environmental or economic disadvantage; or

(VI) being emergent bilingual.

(C) As part of the evaluation described in subparagraph (B) of this paragraph and 34 CFR, §§300.304-300.311, the presence of a significant variance among specific areas of cognitive function or between specific areas of cognitive function and academic achievement is not required when determining whether a student has a significant learning disability.

(D) In order to ensure that underachievement by a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics, the following must be considered:

(i) data that demonstrates the student was provided appropriate instruction in reading (as described in 20 United States Code (USC), §6368(3)), and/or mathematics within general education settings delivered by qualified personnel; and

(ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction, which must be provided to the student's parents. Data-based documentation of repeated assessments may include, but is not limited to, intervention progress monitoring results and reports, in-class tests on grade-level curriculum, or other regularly administered assessments. Intervals are considered reasonable if

consistent with the assessment requirements of a student's specific instructional program.

(E) The school district must ensure that the student is observed in the student's learning environment, including the general education classroom setting, to document the student's academic performance and behavior in the areas of difficulty. In determining whether a student has a specific learning disability, the multidisciplinary team must decide to either use information from an observation in routine classroom instruction and monitoring of the student's performance that was conducted before the student was referred for an evaluation or have at least one of the members described in subsection (b) or (c)(9)(F) of this section conduct an observation of the student's academic performance in the general education classroom after the student has been referred for an evaluation and the school district has obtained parental consent consistent with 34 CFR, §300.300(a). In the case of a student of less than school age or out of school, a member described in subsection (b) or (c)(9)(F) of this section must observe the student in an environment appropriate for a student of that age.

(F) The determination of whether a student suspected of having a specific learning disability is a child with a disability as defined in 34 CFR, §300.8, must be made by the student's parents and a team of qualified professionals, which must include at least one person qualified to conduct individual diagnostic examinations of children such as a licensed specialist in school psychology/school psychologist, an educational diagnostician, a speech-language pathologist, or a remedial reading teacher and one of the following:

(i) the student's general education teacher;

(ii) if the student does not have a general education teacher, a general education classroom teacher qualified to teach a student of his or her age; or

(iii) for a student of less than school age, an individual qualified by the Texas Education Agency to teach a student of his or her age.

(G) Suspicion, and the identification, of dyslexia or dysgraphia, in addition to the requirements of subparagraphs (A)-(F) of this paragraph, must include consideration of the following:

(i) when the specific learning disability of dyslexia is suspected or characteristics of dyslexia have been observed from a reading instrument administered under TEC, §28.006, or a dyslexia screener under TEC, §38.003, the team established under subsections (b) and (c)(9)(F) of this section must include a professional who meets the requirements under TEC, §29.0031(b), and §74.28 of this title (relating to Students with Dyslexia and Related Disorders), including any handbook adopted in the rule;

(ii) an evaluation for dyslexia or dysgraphia must include all of the domains or other requirements listed in TEC, §38.003, and §74.28 of this title, including any handbook adopted in the rule;

(iii) when identifying dyslexia and determining eligibility or continued eligibility for special education and related services, the admission, review, and dismissal (ARD) committee must include a professional who meets the requirements of TEC, §29.0031(b), and §74.28 of this title, including any handbook adopted in the rule; and

(iv) when a student is identified with dyslexia and/or dysgraphia, the terms dyslexia and/or dysgraphia, as appropriate must be used in a student's evaluation report. For formal eligibility purposes under special education, the category of specific learning disability will be reported by a school district.

(10) Speech impairment. A student with a speech impairment is one who has been determined to meet the criteria for speech or language impairment as stated in 34 CFR, §300.8(c)(11). The multidisciplinary team that collects or reviews evaluation data in connection with the

determination of a student's eligibility based on a speech impairment must include a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech/language pathologist.

(11) Traumatic brain injury. A student with a traumatic brain injury is one who has been determined to meet the criteria for traumatic brain injury as stated in 34 CFR, §300.8(c)(12). A student's eligibility based on a traumatic brain injury must include a medical diagnosis provided by a licensed physician.

(12) Visual impairment.

(A) A student with a visual impairment is one who has been determined to meet the criteria for visual impairment as stated in 34 CFR, §300.8(c)(13). Information from a variety of sources must be considered by the multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on visual impairment in order to determine the need for specially designed instruction as stated in 34 CFR, §300.39(b)(3), and must include:

(i) a medical report by a licensed ophthalmologist or optometrist that indicates the visual loss stated in exact measures of visual field and corrected visual acuity, at a distance and at near range, in each eye. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. The report should also include a diagnosis and prognosis whenever possible and whether the student has:

(I) no vision or visual loss after correction; or

(II) a progressive medical condition that will result in no vision or a visual loss after correction;

(ii) a functional vision evaluation by a certified teacher of students with visual impairments or a certified orientation and mobility specialist. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision and recommendations concerning the need for a clinical low vision evaluation;

(iii) a learning media assessment by a certified teacher of students with visual impairments. The learning media assessment must include recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the student and whether or not there is a need for ongoing evaluation in this area; and

(iv) as part of the full individual and initial evaluation, an orientation and mobility evaluation conducted by a person who is appropriately certified as an orientation and mobility specialist. The orientation and mobility evaluation must be conducted in a variety of lighting conditions and in a variety of settings, including in the student's home, school, and community, and in settings unfamiliar to the student.

(B) A person who is appropriately certified as an orientation and mobility specialist must participate in an initial eligibility determination and any reevaluation as part of the multidisciplinary team, in accordance with 34 CFR, §§300.122 and 300.303-300.311, in evaluating data used to make the determination of the student's need for specially designed instruction.

(C) A child under three years of age meets the criteria for visual impairment if the child's record indicates that the child is experiencing a developmental delay because of vision loss or impairment, or the child has a physical or mental condition that has a high probability of resulting in a developmental delay and a sensory impairment, in accordance with 34 CFR, §303.21.

(13) Developmental delay. A student with developmental delay is one who is between the ages of 3-9 who is evaluated by a multidisciplinary team for at least one disability category listed in

paragraphs (1)-(12) of this subsection and whose evaluation data indicates a need for special education and related services and shows evidence of, but does not clearly confirm, the presence of the suspected disability or disabilities due to the child's young age. In these cases, an ARD committee may determine that data supports identification of developmental delay in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development. To use this eligibility category, multiple sources of data must converge to indicate the student has a developmental delay as described by one of the following:

(A) performance on appropriate norm-referenced measures, including developmental measures, indicate that the student is at least 2 standard deviations below the mean or at the 2nd percentile of performance, when taking into account the standard error of measurement (SEM), in one area of development as listed in this paragraph, along with additional convergent evidence such as interviews and observation data that supports the delay in that area;

(B) performance on appropriate norm-referenced measures, including developmental measures, indicate that the student is at least 1.5 standard deviations below the mean or at the 7th percentile of performance, when taking into account the SEM, in at least two areas of development as listed in this paragraph, along with additional convergent evidence such as interviews and observation data that supports the delays in those areas; or

(C) a body of evidence from multiple direct and indirect sources, such as play-based assessments, information from the student's parent, interviews, observations, work samples, checklists, and other informal and formal measures of development, that clearly document a history and pattern of atypical development that is significantly impeding the student's performance and progress across settings when compared to age-appropriate expectations and developmental milestones in one or more areas of development as listed in this paragraph.

(14) Noncategorical. A student between the ages of 3-5 who is evaluated as having an intellectual disability, an emotional disability, a specific learning disability, or autism may be described as noncategorical early childhood.

(d) Developmental delay eligibility guidelines. Developmental delay, as described in subsection (c)(13) of this section, and noncategorical, as described in subsection (c)(14) of this section, may be used within the following guidelines.

(1) No school district will be required to use the eligibility category of developmental delay; however, if a district chooses to use this eligibility category, it must use the definition and criteria described in subsection (c)(13) of this section.

(2) If a school district chooses to use the eligibility category described in subsection (c)(13) of this section, it may do so beginning with the 2024-2025 school year.

(3) The eligibility category of noncategorical, as described in subsection (c)(14) of this section, must no longer be used by any school district beginning with the 2025-2026 school year. Any eligible student who begins the 2025-2026 school year already identified under subsection (c)(14) of this section may maintain this eligibility category, if determined appropriate by the student's ARD committee, until the required re-evaluation before the age of six.

Statutory Authority: The provisions of this §89.1040 issued under Texas Education Code, §§29.001, 29.003, and 29.004, and 34 Code of Federal Regulations, §§300.8, 300.101, 300.122, 300.301, 300.302, 300.303, 300.304, 300.305, 300.306, 300.307, 300.308, 300.309, 300.310, and 300.311.

Source: The provisions of this §89.1040 adopted to be effective March 6, 2001, 26 TexReg 1837; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective January 1, 2015, 39 TexReg 10446; amended to be effective December 2, 2015, 40 TexReg 8642; amended to be effective February 15, 2018, 43 TexReg 763; amended to be effective March 14, 2021, 46 TexReg 1466; amended to be effective October 5, 2021, 46 TexReg 6533; amended to be effective June 7, 2022, 47 TexReg 3249; amended to be effective July 30, 2024, 49 TexReg 5507.

§89.1047. Procedures for Special Education Decision-Making for Students in Foster Care.

(a) A foster parent may act as a parent of a child with a disability, in accordance with 34 Code of Federal Regulations (CFR), §300.30, relating to the definition of parent, if requirements of Texas Education Code (TEC), §29.015(a), are met, including the completion of the training program described in subsection (c)(1) of this section.

(1) For a foster parent to serve as a student's parent, a school district must ensure that the foster parent has received training described in subsection (c)(1) of this section. The foster parent must complete the training program before the student's next scheduled admission, review, and dismissal (ARD) committee meeting, but not later than the 90th day after the foster parent begins acting as the parent for the purpose of making special education decisions.

(2) The training program can be conducted or provided by the Texas Department of Family and Protective Services (TDFPS), a school district, an education service center, or any entity that receives federal funds to provide Individuals with Disabilities Education Act (IDEA) training to parents. Once an individual has completed the training, the individual may not be required by any school district to complete additional training in order to serve as the parent or the surrogate parent for the student or other students with disabilities who are in foster care. School districts may provide optional ongoing or supplemental training.

(b) If a school district denies a foster parent the right to serve as a parent, the school district must provide the foster parent with written notice of such denial within seven calendar days after the date on which the decision is made. The written notice must:

(1) specifically explain why the foster parent is being denied the right to serve as the student's parent; and

(2) inform the foster parent of his or her right to file a complaint with the Texas Education Agency in accordance with 34 CFR, §§300.151-300.153, relating to special education complaint procedures.

(c) Except as provided by Texas Family Code, §263.0025, which authorizes a court to appoint a surrogate parent, if a district cannot locate or identify a parent, if the foster parent is unwilling or unable to serve as a parent, or if the student does not reside in a foster home setting, the school district must assign a surrogate parent to make special education decisions on behalf of the student. An individual assigned by a school district to act as a surrogate parent for a student with a disability, in accordance with 34 CFR, §300.519, and TEC, §29.0151, relating to surrogate parents, must comply with the requirements specified in TEC, §29.001(10).

(1) Pursuant to TEC, §29.001(10)(A), a foster parent serving as a parent or an individual assigned by a school district to act as a surrogate parent must complete a training program in which the individual is provided with an explanation of the provisions of federal and state laws, rules, and regulations relating to:

(A) the identification of a student with a disability;

(B) the collection of evaluation and re-evaluation data relating to a student with a disability;

(C) the ARD committee process;

(D) the development of an individualized education program (IEP), including the consideration of transition services for a student who is at least 14 years of age;

(E) the determination of least restrictive environment;

(F) the implementation of an IEP;

(G) the procedural rights and safeguards available under 34 CFR, §§300.148, 300.151-300.153, 300.229, 300.300, 300.500-300.520, 300.530-300.537, and 300.610-300.627, relating to the issues described in 34 CFR, §300.504(c);

(H) where to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities; and

(I) the duties and responsibilities of surrogate parents as required under TEC, §29.0151(d).

(2) The training program described in subsection (c)(1) of this section must be provided in the native language or other mode of communication used by the individual being trained.

(3) To serve as a student's surrogate parent, a school district must ensure that the surrogate parent has received training described in subsection (c)(1) of this section. The individual assigned by a school district to act as a surrogate parent must complete the training program before the student's next scheduled ARD committee meeting but not later than the 90th day after the date of initial assignment as a surrogate parent.

(4) The training program can be conducted or provided by the TDFPS, a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents. Once an individual has completed the training, the individual may not be required by any school district to complete additional training in order to serve as the surrogate parent or the parent for the student or other students with disabilities who are in foster care. School districts may provide optional ongoing or supplemental training.

(d) A surrogate parent appointed by a school district may not be an employee of the Texas Education Agency, the school district, or any other agency involved in the education or care of the child and may not have any interest that conflicts with the interests of the child. Each school district or shared services arrangement must develop and implement procedures for conducting an analysis of whether a potential surrogate parent has an interest that conflicts with the interests of his or her child. Issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to TDFPS.

(e) If a court appoints a surrogate parent for a child with a disability under Texas Family Code, §263.0025, and the school district determines that the surrogate parent is failing to perform or is not properly performing the duties listed under TEC, §29.0151(d), the district must consult with TDFPS and appoint another person to serve as the surrogate parent for the child.

Statutory Authority: The provisions of this §89.1047 issued under Texas Education Code, §§29.001, 29.015, and 29.0151, and 34 Code of Federal Regulations, §300.30 and §300.519.

Source: The provisions of this §89.1047 adopted to be effective February 15, 2018, 43 TexReg 763; amended to be effective March 14, 2021, 46 TexReg 1466.

§89.1049. Parental Rights Regarding Adult Students.

(a) In accordance with 34 Code of Federal Regulations (CFR), §300.320(c) and §300.520, and Texas Education Code (TEC), §29.017, beginning at least one year before a student reaches 18 years of age, the student's individualized education program (IEP) must include a statement that the student has been informed that, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship, all rights granted to the parent under the Individuals with Disabilities Education Act (IDEA), Part B, other than the right to receive any notice required under IDEA, Part B, will transfer to the student upon reaching age 18. The IEP must also state that the student has been provided information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Texas Estates Code, Chapter 1357, and other supports and services that may enable the student to live independently. After the student reaches the age of 18, except as provided by subsection (b) of this section, the school district shall provide any notice required under IDEA, Part B, to both the adult student and the parent.

(b) In accordance with 34 CFR, §300.520(a)(2), and TEC, §29.017(a), all rights accorded to a parent under IDEA, Part B, including the right to receive any notice required by IDEA, Part B, will transfer to an 18-year-old student who is incarcerated in an adult or juvenile state or local correctional institution, unless the student's parent or other individual has been granted guardianship of the student under Texas Estates Code, Title 3.

(c) In accordance with 34 CFR, §300.520(a)(3), a school district must notify in writing the adult student and parent of the transfer of parental rights, as described in subsections (a) and (b) of this section, at the time the student reaches the age of 18. This notification is separate and distinct from the requirement that the student's IEP include a statement relating to the transfer of parental rights beginning at least one year before the student reaches the age of 18. This notification is not required to contain the elements of notice

referenced in 34 CFR, §300.503, but must include a statement that parental rights have transferred to the adult student. The notice must also include information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Texas Estates Code, Chapter 1357, and other supports and services that may enable the student to live independently, and must provide contact information for the parties to use in obtaining additional information.

(d) A notice under IDEA, Part B, which is required to be given to an adult student and parent does not create a right for the parent to consent to or participate in the proposal or refusal to which the notice relates. For example, a notice of an admission, review, and dismissal committee meeting does not constitute invitation to, or create a right for, the parent to attend the meeting. However, in accordance with 34 CFR, §300.321(a)(6), the adult student or the school district may invite individuals who have knowledge or special expertise regarding the student, including the parent.

(e) Nothing in this section prohibits a supported decision-making agreement or a valid power of attorney from being executed by an individual who holds rights under IDEA, Part B.

Statutory Authority: The provisions of this §89.1049 issued under Texas Education Code, §29.001 and §29.017, and 34 Code of Federal Regulations, §§300.320, 300.321, and 300.520.

Source: The provisions of this §89.1049 adopted to be effective April 18, 2002, 27 TexReg 3061; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective February 15, 2018, 43 TexReg 763; amended to be effective July 23, 2024, 49 TexReg 5347.

§89.1050. The Admission, Review, and Dismissal Committee.

(a) Each school district must establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full individual and initial evaluation is conducted pursuant to §89.1011 of this title (relating to Full Individual and Initial Evaluation). The ARD committee is the individualized education program (IEP) team defined in federal law and regulations, including, specifically, 34 Code of Federal Regulations (CFR), §300.321. The school district is responsible for all of the functions for which the IEP team is responsible under federal law and regulations and for which the ARD committee is responsible under state law, including the following:

(1) 34 CFR, §§300.320-300.325, and Texas Education Code (TEC), §29.005 (individualized education programs);

(2) 34 CFR, §§300.145-300.147 (relating to placement of eligible students in private schools by a school district);

(3) 34 CFR, §§300.132, 300.138, and 300.139 (relating to the development and implementation of service plans for eligible students placed by parents in private school who have been designated to receive special education and related services);

(4) 34 CFR, §300.530 and §300.531, and TEC, §37.004 (disciplinary placement of students with disabilities);

(5) 34 CFR, §§300.302-300.306 (relating to evaluations, re-evaluations, and determination of eligibility);

(6) 34 CFR, §§300.114-300.117 (relating to least restrictive environment);

(7) TEC, §28.006 (Reading Diagnosis);

(8) TEC, §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction);

(9) TEC, §28.0212 (Junior High or Middle School Personal Graduation Plan);

(10) TEC, §28.0213 (Intensive Program of Instruction);

(11) TEC, Chapter 29, Subchapter I (Programs for Students Who Are Deaf or Hard of Hearing);

(12) TEC, §30.002 (Education for Children with Visual Impairments);

(13) TEC, §30.003 (Support of Students Enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf);

(14) TEC, §33.081 (Extracurricular Activities);

(15) TEC, §37.004 (Placement of Students with Disabilities);

(16) TEC, §37.307 (Placement and Review of Student with Disability);

(17) TEC, Chapter 39, Subchapter B (Assessment of Academic Skills); and

(18) TEC, §48.102 (Special Education).

(b) For a student from birth through two years of age with a visual impairment or who is deaf or hard of hearing, an individualized family services plan meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§300.320-300.324, and the memorandum of understanding between the Texas Education Agency and the Texas Health and Human Services Commission. For students three years of age and older, school districts must develop an IEP.

(c) ARD committee membership.

(1) ARD committees must include the following:

(A) the parents, as defined by 34 CFR, §300.30, of the student;

(B) not less than one general education teacher of the student (if the student is, or may be, participating in the general education environment) who must, to the extent practicable, be a teacher who is responsible for implementing a portion of the student's IEP;

(C) not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;

(D) a representative of the school district who:

(i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;

(ii) is knowledgeable about the general education curriculum; and

(iii) is knowledgeable about the availability of resources of the school district;

(E) an individual who can interpret the instructional implications of evaluation results, who may be a member of the committee described in subparagraphs (B)-(D) and (F) of this paragraph;

(F) at the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate;

(G) whenever appropriate, the student with a disability;

(H) to the extent appropriate, with the consent of the parents or a student who has reached the age of majority, a representative of any participating agency that is likely to be responsible for providing or paying for transition services;

(I) a representative from career and technical education (CTE), preferably the teacher, when considering initial or continued placement of a student in CTE; and

(J) a professional staff member who is on the language proficiency assessment committee who may be a member of the committee described in subparagraphs (B) and (C) of this paragraph, if the student is identified as emergent bilingual.

(2) The special education teacher or special education provider that participates in the ARD committee meeting must be appropriately certified or licensed as required by 34 CFR, §300.156.

(3) If the student is:

(A) a student with a suspected or documented visual impairment, the ARD committee must include a teacher who is certified in the education of students with visual impairments;

(B) a student who is suspected or documented to be deaf or hard of hearing, the ARD committee must include a teacher who is certified in the education of students who are deaf or hard of hearing;

(C) a student with suspected or documented deaf-blindness, the ARD committee must include a teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students who are deaf or hard of hearing; or

(D) a student who is suspected or identified with dyslexia, when determining initial or continued eligibility, the ARD committee must include a professional who meets the requirements of TEC, §29.0031(b), and §74.28 of this title (relating to Students with Dyslexia and Related Disorders), including any handbook adopted in the rule.

(4) An ARD committee member is not required to attend an ARD committee meeting if the conditions of either 34 CFR, §300.321(e)(1), regarding attendance, or 34 CFR, §300.321(e)(2), regarding excusal, have been met.

(d) The school district must take steps to ensure that one or both parents are present at each ARD committee meeting or are afforded the opportunity to participate, including notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed upon time and place. Additionally, a school district must allow parents who cannot attend an ARD committee meeting to participate in the meeting through other methods such as through telephone calls or video conferencing. The school district must provide the parents with written notice of the ARD committee meeting that meets the requirements in 34 CFR, §300.322, at least five school days before the meeting unless the parents agree to a shorter timeframe.

(e) Upon receipt of a written request for an ARD committee meeting from a parent, the school district must:

(1) schedule and convene a meeting in accordance with the procedures in subsection (d) of this section; or

(2) within five school days, provide the parent with written notice explaining why the district refuses to convene a meeting.

(f) The school district must provide the parent with a written notice required under subsection (d) or (e)(2) of this section in the parent's native language, unless it is clearly not feasible to do so. If the parent's native language is not a written language, the school district must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication so that the parent understands the content of the notice.

(g) Whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education to the student, the school district must provide prior written notice as required in 34 CFR, §300.503, including providing the notice in the parent's native language or other mode of communication. This notice must be provided to the parent at least five school days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.

Statutory Authority: The provisions of this §89.1050 issued under Texas Education Code, §§28.025, 29.001, 29.003, 29.004, 29.005, 29.010, 29.011, 29.0111, 29.012, 29.013, 29.0151, 29.017, 29.018, 29.019, 29.020, 30.001, 30.0015, 30.002, 30.021, 30.005, 30.051, 30.057, 30.083, 37.0021, 48.004, and 48.102; Texas Government Code, §392.002; and 34 Code of Federal Regulations, §§300.8, 300.100, 300.101, 300.111, 300.114, 300.121, 300.124, 300.129, 300.147, 300.149, 300.151, 300.152, 300.153, 300.307, 300.308, 300.309, 300.310, 300.311, 300.320, 300.322, 300.323, 300.500, 300.506, 300.507, and 300.600.

Source: The provisions of this §89.1050 adopted to be effective March 6, 2001, 26 TexReg 1837; amended to be effective August 1, 2002, 27 TexReg 3061; amended to be effective November 16, 2003, 28 TexReg 9830; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective January 1, 2015, 39 TexReg 10446; amended to be effective December 2, 2015, 40 TexReg 8642; amended to be effective March 22, 2017, 42 TexReg 1247; amended to be effective March 14, 2021, 46 TexReg 1466; amended to be effective October 5, 2021, 46 TexReg 6533; amended to be effective June 7, 2022, 47 TexReg 3249; amended to be effective July 14, 2023, 48 TexReg 3906; amended to be effective July 30, 2024, 49 TexReg 5507.

§89.1052. Discretionary Placements in Juvenile Justice Alternative Education Programs.

(a) This section applies only to the expulsion of a student with a disability under:

(1) Texas Education Code (TEC), §37.007(b), (c), or (f); or

(2) TEC, §37.007(d), as a result of conduct that contains the elements of any offense listed in TEC, §37.007(b)(2)(C), against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district.

(b) In a county with a Juvenile Justice Alternative Education Program (JJAEP), a local school district must invite the administrator of the JJAEP or the administrator's designee to an admission, review, and dismissal (ARD) committee meeting convened to discuss the expulsion of a student with a disability under one of the provisions listed in subsection (a) of this section, relating to offenses for which a school district may expel a student. The school district must provide written notice of the meeting at least five school days before the meeting or a shorter timeframe agreed to by the student's parents. A copy of the student's current individualized education program (IEP) must be provided to the JJAEP representative with the notice. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means, including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's placement in the JJAEP and implementation of the student's current IEP in the JJAEP.

(c) For a student with a disability who was expelled under one of the provisions listed in subsection (a) of this section and placed in the JJAEP, an ARD committee meeting must be convened to reconsider placement of the student in the JJAEP if the JJAEP provides written notice to the school district of specific concerns that the student's educational or behavioral needs cannot be met in the JJAEP. The school district must invite the JJAEP administrator or the administrator's designee to the meeting and must provide written notice of the meeting at least five school days before the meeting or a shorter timeframe agreed to by the student's parents. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means, including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's continued placement in the JJAEP.

Statutory Authority: The provisions of this §89.1052 issued under Texas Education Code, §§29.001, 37.004, 37.0061, 37.007, 37.0081, 37.011, 37.012, 37.013, and 37.062.

Source: The provisions of the §89.1052 adopted to be effective August 1, 2002, 27 TexReg 3061; amended to be effective November 16, 2003; 28 TexReg 9830; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective December 2, 2015, 40 TexReg 8642.

§89.1053. Procedures for Use of Restraint and Time-Out.

(a) Requirement to implement. In addition to the requirements of 34 Code of Federal Regulations (CFR), §300.324(a)(2)(i), school districts and charter schools must implement the provisions of this section regarding the use of restraint and time-out. In accordance with the provisions of Texas Education Code (TEC), §37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out), it is the policy of the state to treat with dignity and respect all students, including students with disabilities who receive special education services under TEC, Chapter 29, Subchapter A.

(b) Definitions.

(1) Emergency means a situation in which a student's behavior poses a threat of:

(A) imminent, serious physical harm to the student or others; or

(B) imminent, serious property destruction.

(2) Restraint means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body.

(3) Time-out means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:

(A) that is not locked; and

(B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

(c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section and with the following limitations.

(1) Restraint must be limited to the use of such reasonable force as is necessary to address the emergency.

(2) Restraint must be discontinued at the point at which the emergency no longer exists.

(3) Restraint must be implemented in such a way as to protect the health and safety of the student and others.

(4) Restraint must not deprive the student of basic human necessities.

(d) Training on use of restraint. Training for school employees, volunteers, or independent contractors must be provided according to the following requirements.

(1) A core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.

(2) Personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.

(3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.

(4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.

(e) Documentation and notification on use of restraint. In a case in which restraint is used, school employees, volunteers, or independent contractors must implement the following documentation requirements.

(1) On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.

(2) On the day restraint is utilized, a good faith effort must be made to verbally notify the parent(s) regarding the use of restraint.

(3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.

(4) Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the admission, review, and dismissal (ARD) committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavior improvement plan or a behavioral intervention plan.

(5) Written notification must be provided to the student's parent(s) or person standing in parental relation to the student for each use of restraint, and documentation of each restraint must be placed in the student's special education eligibility folder. The written notification of each restraint must include the following:

(A) name of the student;

(B) name of the individual administering the restraint;

(C) date of the restraint and the time the restraint began and ended;

(D) location of the restraint;

(E) nature of the restraint;

(F) a description of the activity in which the student was engaged immediately preceding the use of restraint;

(G) the behavior of the student that prompted the restraint;

(H) the efforts made to de-escalate the situation and any alternatives to restraint that were attempted;

(I) observation of the student at the end of the restraint;

(J) information documenting parent contact and notification; and

(K) one of the following:

(i) if the student has a behavior improvement plan or behavioral intervention plan, whether the behavior improvement plan or behavioral intervention plan may need to be revised as a result of the behavior that led to the restraint and, if so, identification of the staff member responsible for scheduling an ARD committee meeting to discuss any potential revisions; or

(ii) if the student does not have a behavior improvement plan or a behavioral intervention plan, information on the procedure for the student's parent or person standing in parental relation to the student to request an ARD committee meeting to discuss the possibility of conducting a functional behavioral assessment of the student and developing a plan for the student.

(f) Clarification regarding restraint. The provisions adopted under this section do not apply to the use of physical force or a mechanical device that does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced in subsection (b)(2) of this section does not include:

(1) physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;

(2) limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort;

(3) limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the individualized education program (IEP) as required by 34 CFR, §300.324(a)(2)(i) to promote student learning and reduce and/or prevent the need for ongoing intervention; or

(4) seat belts and other safety equipment used to secure students during transportation.

(g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(3) of this section with the following limitations.

(1) Physical force or threat of physical force must not be used to place a student in time-out.

(2) Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or behavior improvement plan or behavioral intervention plan if it is utilized on a recurrent basis to increase or decrease a targeted behavior.

(3) Use of time-out must not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

(h) Training on use of time-out. Training for school employees, volunteers, or independent contractors must be provided according to the following requirements.

(1) General or special education personnel who implement time-out based on requirements established in a student's IEP and/or behavior improvement plan or behavioral intervention plan must be trained in the use of time-out.

(2) Newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or behavior improvement plan or behavioral intervention plan must receive

training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.

(3) Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, and must address the impact of time-out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

(4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.

(i) Documentation on use of time-out. Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP and/or behavior improvement plan or behavioral intervention plan. If a student has a behavior improvement plan or behavioral intervention plan, the school district must document each use of time-out prompted by a behavior of the student specified in the student's behavior improvement plan or behavioral intervention plan, including a description of the behavior that prompted the time-out. The ARD committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

(j) Student safety. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.

(k) Data reporting. With the exception of actions covered by subsection (f) of this section, data regarding the use of restraint must be electronically reported to the Texas Education Agency (TEA) in accordance with reporting standards specified by the TEA.

(l) Peace officers. The provisions adopted under this section apply to a peace officer only if the peace officer is employed or commissioned by the school district or provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the school district and a local law enforcement agency, except that the data reporting requirements in subsection (k) of this section apply to the use of restraint by any peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity.

(m) The provisions adopted under this section do not apply to:

(1) juvenile probation, detention, or corrections personnel; or

(2) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

Statutory Authority: The provisions of this §89.1053 issued under Texas Education Code, §§29.001, 37.0021, and 37.0023.

Source: The provisions of the §89.1053 adopted to be effective August 1, 2002, 27 TexReg 3061; amended to be effective June 7, 2004, 29 TexReg 5608; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective January 1, 2015, 39 TexReg 10446; amended to be effective June 7, 2022, 47 TexReg 3249.

§89.1055. Individualized Education Program.

(a) The individualized education program (IEP) developed by the admission, review, and dismissal (ARD) committee for each student with a disability must comply with the requirements of 34 Code of Federal Regulations (CFR), §300.320 and §300.324, and include all applicable information under Texas Education Code (TEC), §29.0051.

(b) To be considered a measurable annual goal under 34 CFR, §300.320(a)(2), a goal must include the components of a timeframe, condition, behavior, and criterion. While at least one measurable annual goal is required, the number of annual goals will be determined by the ARD committee after examination of the student's present levels of academic achievement and functional performance and areas of need.

(1) Annual goals are also required in the following circumstances:

(i) when the content of a subject/course is modified, whether the content is taught in a general or special education setting, in order to address how the content is modified; and

(ii) when a student is removed from the general education setting for a scheduled period of time but the content of the subject/course is not modified (e.g., a student who is progressing on enrolled grade level curriculum but requires a more restrictive environment for a period of time due to behavioral concerns).

(2) Short-term objectives/benchmarks, used as intermediary steps or milestones toward accomplishing an annual goal, may be included in a measurable annual goal. Short-term objectives/benchmarks:

(i) must be included in an annual goal if the ARD committee has determined that a student will not participate in the general state assessment; and

(ii) regardless of whether the objectives/benchmarks are related to a student not participating the general state assessment, cannot be used as the criterion to indicate mastery of the annual goal.

(c) The IEP must include a statement of any individual appropriate and allowable accommodations in the administration of assessment instruments developed in accordance with TEC, §39.023(a)-(c), or districtwide assessments of student achievement (if the district administers such optional assessments) that are necessary to measure the academic achievement and functional performance of the student on the assessments.

(d) If the ARD committee determines that the student will not participate in a general statewide or districtwide assessment of student achievement (or part of an assessment), the following requirements must be met.

(1) The IEP must include a statement explaining:

(A) why the student cannot participate in the general assessment; and

(B) why the particular alternate assessment selected is appropriate for the student, and

(2) The Texas Education Agency's alternate assessment participation requirements form, if one is made available to school districts, must be included in the student's IEP to document the statement required under this subsection.

(e) If the ARD committee determines that the student is in need of extended school year (ESY) services, as described in §89.1065 of this title (relating to Extended School Year Services), then the IEP must identify which of the goals and objectives in the IEP will be addressed during ESY services.

(f) For students with visual impairments, from birth through 21 years of age, the IEP or individualized family services plan must also meet the requirements of TEC, §30.002(e).

(g) For students with autism eligible under §89.1040(c)(1) of this title (relating to Eligibility Criteria), the strategies described in this subsection must be considered, at least annually based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed, addressed in the IEP:

(1) extended educational programming (for example: extended day and/or extended school year services that consider the duration of programs/settings based on data collected related to behavior, social skills, communication, academics, and self-help skills);

(2) daily schedules reflecting minimal unstructured time and active engagement in learning activities (for example: lunch, snack, and recess periods that provide flexibility within routines; adapt to individual skill levels; and assist with schedule changes, such as changes involving substitute teachers and pep rallies);

(3) in-home and community-based training or viable alternatives that assist the student with acquisition of social, behavioral, communication, and self-help skills (for example: strategies that facilitate maintenance and generalization of such skills from home to school, school to home, home to community, and school to community);

(4) positive behavior support strategies based on relevant information, for example:

(A) antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions; and

(B) a behavioral intervention plan developed from a functional behavioral assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings and is implemented and reviewed in accordance with subsection (j) of this section;

(5) beginning at any age, consistent with subsection (l) of this section, futures planning for integrated learning and training, living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments, including self-determination and self-advocacy skills;

(6) parent/family training and support, provided by qualified personnel with experience in autism, that, for example:

(A) provides a family with skills necessary for a student to succeed in the home/community setting;

(B) includes information regarding resources (for example: parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching/management techniques related to the student's curriculum); and

(C) facilitates parental carryover of in-home training (for example: strategies for behavior management and developing structured home environments and/or communication training so that parents are active participants in promoting the continuity of interventions across all settings);

(7) suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social/behavioral progress based on the student's developmental and learning level (acquisition, fluency, maintenance, generalization) that encourages work towards individual independence as determined by, for example:

(A) adaptive behavior evaluation results;

(B) behavioral accommodation needs across settings; and

(C) transitions within the school day;

(8) communication interventions, including language forms and functions that enhance effective communication across settings (for example: augmentative, incidental, and naturalistic teaching);

(9) social skills supports and strategies based on social skills assessment/curriculum and provided across settings (e.g., peer-based instruction and intervention, video modeling, social narratives, and role playing);

(10) professional educator/staff support (for example: training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP); and

(11) teaching strategies based on peer reviewed, research-based practices for students with autism (for example: those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, or social skills training).

(h) If the ARD committee determines that services are not needed in one or more of the areas specified in subsection (g) of this section, the IEP must include a statement to that effect and the basis upon which the determination was made.

(i) For students identified with the specific learning disability of dyslexia or a related disorder eligible under §89.1040(c)(9) of this title (relating to Eligibility Criteria), the IEP must also be developed and implemented in accordance with the requirements under §74.28 of this title (relating to Students with Dyslexia and Related Disorders), including any handbook adopted in the rule.

(j) If the ARD committee determines that a behavior improvement plan or a behavioral intervention plan is appropriate for a student, that plan must be included as part of the student's IEP and provided to each

teacher with responsibility for educating the student. If a behavior improvement plan or a behavioral intervention plan is included as part of a student's IEP, the ARD committee shall review the plan at least annually, and more frequently if appropriate, to address:

(1) changes in a student's circumstances that may impact the student's behavior, such as:

(A) the placement of the student in a different educational setting;

(B) an increase or persistence in disciplinary actions taken regarding the student for similar types of behavioral incidents;

(C) a pattern of unexcused absences; or

(D) an unauthorized, unsupervised departure from an educational setting; or

(2) the safety of the student or others.

(k) Not later than the first IEP to be in effect when the student turns 14 years of age, the ARD committee must consider and, if appropriate, address the following issues in the IEP:

(1) appropriate student involvement in the student's transition to life outside the public school system;

(2) appropriate involvement in the student's transition by the student's parents and other persons invited to participate by:

(A) the student's parents; or

(B) the school district in which the student is enrolled;

(3) appropriate postsecondary education options, including preparation for postsecondary-level coursework;

(4) an appropriate functional vocational evaluation;

(5) appropriate circumstances for facilitating a referral of a student or the student's parents to a governmental agency for services or public benefits, including a referral to a governmental agency to place the student on a waiting list for public benefits available to the student such as a waiver program established under the Social Security Act (42 U.S.C. Section 1396n(c)), §1915(c); and

(6) the use and availability of appropriate:

(A) supplementary aids, services, curricula, and other opportunities to assist the student in developing decision-making skills; and

(B) supports and services to foster the student's independence and self-determination, including a supported decision-making agreement under Texas Estates Code, Chapter 1357.

(l) Beginning not later than the first IEP to be in effect when the student turns 14 years of age, or younger if determined appropriate by the ARD committee, the IEP must include:

(1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) the transition services, including courses of study, needed to assist the student in reaching the postsecondary goals.

(m) The goals included in a student's IEP to comply with subsection (l) of this section are intended to comply with the requirements in TEC, §29.011(a)(6) and (8).

(n) Beginning not later than the first IEP to be in effect when the student turns 18 years of age (see §89.1049 of this title (relating to Parental Rights Regarding Adult Students) for notice requirement of transfer of rights), the ARD committee must consider and, if appropriate, address the following issues in the student's IEP:

(1) involvement in the student's transition and future by the student's parents and other persons, if the parent or other person:

(A) is invited to participate by the student or the school district in which the student is enrolled; or

(B) has the student's consent to participate pursuant to a supported decision-making agreement under Texas Estates Code, Chapter 1357; and

(2) the availability of age-appropriate instructional environments, including community settings or environments that prepare the student for postsecondary education or training, competitive integrated employment, or independent living, in coordination with the student's transition goals and objectives.

(o) A student's ARD committee shall review at least annually the issues described in subsections (k), (l), and (n) of this section and, if necessary, update the portions of the student's IEP that address those issues.

(p) All members of the ARD committee must have the opportunity to participate in a collaborative manner in developing the IEP. The school district must take all reasonable actions necessary to ensure that the parent understands the proceedings of the ARD committee meeting, including arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is a language other than English. A decision of the ARD committee concerning required elements of the IEP must be made by mutual agreement if possible. The ARD committee may agree to an annual IEP or an IEP of shorter duration.

(1) When mutual agreement about all required elements of the IEP is not achieved, the parent who disagrees must be offered a single opportunity to recess and reconvene the ARD committee meeting. The period of time for reconvening the ARD committee meeting must not exceed ten school days, unless the parties mutually agree otherwise. The ARD committee must schedule the reconvened meeting at a mutually agreed upon time and place. The opportunity to recess and reconvene is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense that may lead to a placement in a disciplinary alternative education program. The requirements of this subsection do not prohibit the ARD committee from recessing an ARD committee meeting for reasons other than the failure to reach mutual agreement about all required elements of an IEP.

(2) During the recess, the ARD committee members must consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the ARD committee to reach mutual agreement.

(3) If a recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the school district must implement the IEP that it has determined to be appropriate for the student.

(4) Each member of the ARD committee who disagrees with the IEP developed by the ARD committee is entitled to include a statement of disagreement in the IEP.

(q) The written statement of the IEP must document the decisions of the ARD committee with respect to issues discussed at each ARD committee meeting. The written statement must also include:

(1) the date of the meeting;

(2) the name, position, and signature of each member participating in the meeting; and

(3) an indication of whether the child's parents, the adult student, if applicable, and the administrator agreed or disagreed with the decisions of the ARD committee.

(r) If the student's parent is unable to speak English and the parent's native language is Spanish, the school district must provide a written copy or audio recording of the student's IEP translated into Spanish. If the student's parent is unable to speak English and the parent's native language is a language other than Spanish, the school district must make a good faith effort to provide a written copy or audio recording of the student's IEP translated into the parent's native language.

(1) For purposes of this subsection, a written copy of the student's IEP translated into Spanish or the parent's native language means that all of the text in the student's IEP in English is accurately translated into the target language in written form. The IEP translated into the target language must be a comparable rendition of the IEP in English and not a partial translation or summary of the IEP in English.

(2) For purposes of this subsection, an audio recording of the student's IEP translated into Spanish or the parent's native language means that all of the content in the student's IEP in English is orally translated into the target language and recorded with an audio device. A school district is not prohibited from providing the parent with an audio recording of an ARD committee meeting at which the parent was assisted by an interpreter as long as the audio recording provided to the parent contains an oral translation into the target language of all of the content in the student's IEP in English.

(3) If a parent's native language is not a written language, the school district must take steps to ensure that the student's IEP is translated orally or by other means to the parent in his or her native language or other mode of communication.

(4) Under 34 CFR, §300.322(f), a school district must give a parent a written copy of the student's IEP at no cost to the parent. A school district meets this requirement by providing a parent with a written copy of the student's IEP in English or by providing a parent with a written translation of the student's IEP in the parent's native language in accordance with paragraph (1) of this subsection.

(s) A school district must comply with the following for a student who is new to the school district.

(1) When a student transfers to a new school district within the state in the same school year and the parents or previous school district verifies that the student had an IEP that was in effect in the previous district, the new school district must meet the requirements of 34 CFR, §300.323(e), by either adopting the student's IEP from the previous school district or developing, adopting, and implementing a new IEP. The timeline for adopting the previous IEP or developing, adopting, and implementing a new IEP is 20 school days from the date the student is verified as being a student eligible for special education services.

(2) When a student transfers from a school district in another state in the same school year and the parents or previous school district verifies that the student had an IEP that was in effect in the previous district, the new school district must, if determined necessary, conduct a full individual and initial evaluation and make an eligibility determination and, if appropriate, develop, adopt, and implement a new IEP, within the timelines established in §89.1011 of this title (relating to Full and Individual Initial Evaluation). If the school district determines that an evaluation is not necessary, the timeline for the new district to develop, adopt, and implement a new IEP is 20 school days from the date the student is verified as being a student eligible for special education services.

(3) Students who register in a new school district in the state during the summer when students are not in attendance for instructional purposes, the provisions of paragraphs (1) and (2) of this subsection apply based on whether the students are coming from an in-state or out-of-state school district. All other provisions in this subsection apply to these students.

(4) In accordance with 34 CFR, §300.323(g), the new school district must take reasonable steps to promptly obtain the student's records from the previous school district, and, in accordance with TEC, §25.002, and 34 CFR, §300.323(g), the previous school district must furnish the new school district with a copy of the student's records, including the student's special education records, not later than the 10th working day after the date a request for the information is received by the previous school district.

(5) If a parent hasn't already provided verification of eligibility and the new school district has been unable to obtain the necessary verification records from the previous district by the 15th working day after the date a request for the records was submitted by the new district to the previous district, the new school district must seek verification from the student's parent. If the parent provides verification, the new school district must comply with all paragraphs of this subsection. The new school district is encouraged to ask the parent to provide verification of eligibility before the 15th working day after the date a request for the records was submitted by the new district to the previous district. If the parent is unwilling or unable to provide such verification, the new district must continue to take reasonable steps to obtain the student's records from the previous district and provide any services comparable to what the student received at the previous district if they communicate those to the new district.

(6) For the purposes of this subsection, "verify" means that the new school district has received a copy of the student's IEP that was in effect in the previous district. The first school day after the new district receives a copy of the student's IEP that was in effect in the previous district begins the timelines associated with paragraphs (1) and (2) of this subsection.

(7) While the new school district waits for verification, the new school district must take reasonable steps to provide, in consultation with the student's parents, services comparable to those the student received from the previous district if the new school district has been informed by the previous school district of the student's special education and related services and placement.

(8) Once the new school district receives verification that the student had an IEP in effect at the previous district, comparable services must be provided to a student during the timelines established under paragraphs (1) and (2) of this subsection. Comparable services include provision of ESY services if those services are identified in the previous IEP or if the new district has reason to believe that the student would be eligible for ESY services.

Statutory Authority: The provisions of this §89.1055 issued under Texas Education Code, §§29.001, 29.005, 29.011, and 29.0111, and 34 Code of Federal Regulations, §§300.100, 300.101, and 300.320.

Source: The provisions of this §89.1055 adopted to be effective September 1, 1996, 21 TexReg 7240; amended to be effective March 6, 2001, 26 TexReg 1837; amended to be effective June 7, 2004, 29 TexReg 5608; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective January 1, 2015, 39 TexReg 10446; amended to be effective March 22, 2017, 42 TexReg 1247; amended to be effective February 15, 2018, 43 TexReg 763; amended to be effective March 14, 2021, 46 TexReg 1466; amended to be effective June 7, 2022, 47 TexReg 3249; amended to be effective July 30, 2024, 49 TexReg 5507.

§89.1056. Transfer of Assistive Technology Devices.

(a) Unless otherwise specifically defined in this section, the terms used in this section shall have the meanings ascribed to such terms in Texas Education Code (TEC), §30.0015, (Transfer of Assistive Technology Devices).

(b) A transfer of an assistive technology device (ATD) pursuant to TEC, §30.0015, shall be in accordance with a transfer agreement which incorporates the standards described in TEC, §30.0015(c), and which includes, specifically, the following.

(1) The transferor and transferee must represent and agree that the terms of the transfer are based on the fair market value of the ATD, determined in accordance with generally accepted accounting principles.

(2) The informed consent of the parent of the student with a disability for whom the ATD is being transferred must be obtained before the transfer of an ATD pursuant to TEC, §30.0015. The procedures employed by a school district in obtaining such informed consent shall be consistent with the procedures employed by the district to obtain parental consent under 34 Code of Federal Regulations (CFR), §300.300. If the student has the legal capacity to enter into a contract, the informed consent may be obtained from the student. Consistent with 34 CFR, §300.505(c), informed parental or adult student consent need not be obtained if the school district can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent or the adult student has failed to respond. To meet the reasonable measures requirement, the school district must use procedures consistent with those described in 34 CFR, §300.322(d).

(3) If the transfer is a sale, then the sale of the ATD shall be evidenced by a "Uniform Transfer Agreement" (UTA) which includes the following:

(A) the names of the transferor and the transferee (which may be any individual or entity identified in TEC, §30.0015(b));

(B) the date of the transfer;

(C) a description of the ATD being transferred;

(D) the terms of the transfer (including the transfer of warranties, to the extent applicable); and

(E) the signatures of authorized representatives of both the transferor and the transferee.

(c) The Texas Education Agency shall annually disseminate to school districts the standards for a school district's transfer of an ATD pursuant to TEC, §30.0015.

(d) Nothing in this section or in TEC, §30.0015, shall:

(1) alter any existing obligation under federal or state law to provide ATDs to students with disabilities;

(2) require a school district to transfer an ATD to any person or entity;

(3) limit a school district's right to sell, lease, loan, or otherwise convey or dispose of property as authorized by federal or state laws, rules, or regulations; or

(4) authorize any transfer of an ATD that is inconsistent with any restriction on transferability imposed by the manufacturer or developer of the ATD or applicable federal or state laws, rules, or regulations.

Statutory Authority: The provisions of this §89.1056 issued under Texas Education Code, §29.001 and §30.0015.

Source: The provisions of this §89.1056 adopted to be effective March 6, 2001, 26 TexReg 1837; amended to be effective November 11, 2007, 32 TexReg 8129.

§89.1065. Extended School Year Services.

Extended school year (ESY) services are defined as individualized instructional programs beyond the regular school year for eligible students with disabilities.

(1) The need for ESY services must be determined on an individual student basis by the admission, review, and dismissal (ARD) committee in accordance with 34 Code of Federal Regulations (CFR), §300.106, and the provisions of this section. In determining the need for and in providing ESY services, a school district may not:

(A) limit ESY services to particular categories of disability; or

(B) unilaterally limit the type, amount, or duration of ESY services.

(2) The need for ESY services must be documented using data collected by the district and the student's parents using formal or informal assessments. The documentation must demonstrate that in one or more critical areas addressed in the current individualized education program (IEP) where the student has previously demonstrated acquired progress, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time. Severe or substantial regression means that the student has been, or will be, unable to maintain previously acquired progress in one or more critical IEP areas in the absence of ESY services.

(3) The reasonable period of time for recoupment of acquired critical skills must be determined on the basis of needs identified in each student's IEP. If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results, or reasonably may be expected to result, in immediate physical harm to the student or to others, ESY services may be justified without consideration of the period of time for recoupment of such skills. In any case, the period of time for recoupment must not exceed eight weeks.

(4) A skill is critical when the loss of that skill results, or is reasonably expected to result, in any of the following occurrences during the first eight weeks of the next regular school year:

(A) placement in a more restrictive instructional arrangement;

(B) significant loss of acquired skills necessary for the student to appropriately progress in the general curriculum;

(C) significant loss of self-sufficiency in self-help skill areas as evidenced by an increase in the number of direct service staff and/or amount of time required to provide special education or related services;

(D) loss of access to community-based independent living skills instruction or an independent living environment provided by noneducational sources as a result of regression in skills; or

(E) loss of access to on-the-job training or productive employment as a result of regression in skills.

(5) The ARD committee must consider ESY services at the annual review of a student's IEP. If a student for whom ESY services were considered and rejected at the annual IEP review meeting later demonstrates a need for ESY services based on the criteria described in this section, the parent and school district must determine either through an IEP amendment by agreement in accordance with 34 CFR, §300.324(a)(4), or during an ARD committee meeting the location, duration, and frequency of ESY services the student requires.

(6) If a student for whom ESY services were considered and rejected loses critical skills because of the decision not to provide ESY services, and if those skills are not regained after the reasonable period of time for recoupment, the ARD committee must reconsider the current IEP if the student's loss of critical skills interferes with the implementation of the student's IEP.

(7) For students enrolling in a district during the school year, information obtained from the prior school district as well as information collected during the current year may be used to determine the need for ESY services.

(8) The provision of ESY services is limited to the educational needs of the student and must not supplant or limit the responsibility of other public agencies to continue to provide care and treatment services pursuant to policy or practice, even when those services are similar to, or the same as, the services addressed in the student's IEP. No student will be denied ESY services because the student receives care and treatment services under the auspices of other agencies.

(9) Districts are not eligible for reimbursement for ESY services provided to students for reasons other than those set forth in this section.

(10) If a student whose IEP notes that ESY services are required withdraws from one district and registers in another district during the summer months, the new district will be responsible for ensuring those services are provided. This may include the direct provision of those services or contracting with the previous district or another entity to provide the services or payment for the services.

Statutory Authority: The provisions of this §89.1065 issued under Texas Education Code, §29.001, and 34 Code of Federal Regulations, §300.106.

Source: The provisions of this §89.1065 adopted to be effective September 1, 1996, 21 TexReg 7240; amended to be effective March 6, 2001, 26 TexReg 1837; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective January 1, 2015, 39 TexReg 10446; amended to be effective July 23, 2024, 49 TexReg 5347.

§89.1070. Graduation Requirements.

(a) Graduation with a regular high school diploma under subsections (b)(1), (b)(3)(D), (f)(1), (f)(2), (f)(3), or (f)(4)(D) of this section terminates a student's eligibility for special education services under this subchapter and Part B of the Individuals with Disabilities Education Act and entitlement to the benefits of the Foundation School Program, as provided in Texas Education Code (TEC), §48.003(a).

(b) A student entering Grade 9 in the 2014-2015 school year and thereafter who receives special education services may graduate and be awarded a regular high school diploma if the student meets one of the following conditions.

(1) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110- 117, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title (relating to Foundation High School Program) applicable to students in general education as well as satisfactory performance as established in the TEC, Chapter 39, on the required end-of-course assessment instruments.

(2) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title applicable to students in general education but the student's ARD committee has determined that satisfactory performance on the required end-of-course assessment instruments is not necessary for graduation.

(3) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title through courses, one or more of which contain modified curriculum that is aligned to the standards applicable to students in general education, as well as satisfactory performance as established in the TEC, Chapter 39, on the required end-of course assessment instruments, unless the student's ARD committee has determined that satisfactory performance on the required end-of-course assessment instruments is not necessary for graduation. The student must also successfully complete the student's individualized education program (IEP) and meet one of the following conditions.

(A) Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district.

(B) Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district.

(C) The student has access to services that are not within the legal responsibility of public education or employment or educational options for which the student has been prepared by the academic program.

(D) The student no longer meets age eligibility requirements.

(c) A student receiving special education services may earn an endorsement under §74.13 of this title (relating to Endorsements) if the student:

(1) satisfactorily completes the requirements for graduation under the Foundation High School Program specified in §74.12 of this title as well as the additional credit requirements in mathematics, science, and elective courses as specified in §74.13(e) of this title with or without modified curriculum;

(2) satisfactorily completes the courses required for the endorsement under §74.13(f) of this title without any modified curriculum or with modification of the curriculum, provided that the curriculum, as modified, is sufficiently rigorous as determined by the student's ARD committee; and

(3) performs satisfactorily as established in the TEC, Chapter 39, on the required end-of-course assessment instruments unless the student's ARD committee determines that satisfactory performance is not necessary.

(d) Notwithstanding subsection (c)(3) of this section, a student receiving special education services classified in Grade 11 or 12 who has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments is eligible to receive an endorsement if the student has met the requirements in subsection (c)(1) and (2) of this section.

(e) A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a high school diploma under the Foundation High School Program as provided in §74.1021 of this title (relating to Transition to the Foundation High School Program), if the student's ARD committee determines that the student should take courses under that program and the student satisfies the

requirements of that program. Subsections (c) and (d) of this section apply to a student transitioning to the Foundation High School Program under this subsection. As the TEC, §28.0258 and §39.025(a-2), modify the state assessment requirements applicable to students in general education, a student receiving special education services who is classified in Grade 11 or 12 who has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments may graduate if the student has satisfied all other applicable graduation requirements.

(f) A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a regular high school diploma if the student meets one of the following conditions.

(1) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110- 117, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation (under the recommended or distinguished achievement high school programs in Chapter 74, Subchapter F, of this title (relating to Graduation Requirements, Beginning with School Year 2007-2008) or Chapter 74, Subchapter G, of this title (relating to Graduation Requirements, Beginning with School Year 2012-2013)), as applicable, including satisfactory performance as established in the TEC, Chapter 39, on the required state assessments.

(2) Notwithstanding paragraph (1) of this subsection, as the TEC, §28.0258 and §39.025(a-2), modify the state assessment requirements applicable to students in general education, a student receiving special education services who is classified in Grade 11 or 12 may graduate under the recommended or distinguished achievement high school program, as applicable, if the student has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments and has met all other applicable graduation requirements in paragraph (1) of this subsection.

(3) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110- 117, 126-128, and 130 of this title and satisfactorily completed credit requirements for graduation (under the minimum high school program in Chapter 74, Subchapter F or G, of this title), as applicable, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation.

(4) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110- 117, 126-128, and 130 of this title through courses, one or more of which contain modified content that is aligned to the standards required under the minimum high school program in Chapter 74, Subchapter F or G, of this title, as applicable, as well as the satisfactorily completed credit requirements under the minimum high school program, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation. The student graduating under this subsection must also successfully complete the student's IEP and meet one of the following conditions.

(A) Consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district.

(B) Consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district.

(C) The student has access to services that are not within the legal responsibility of public education or employment or educational options for which the student has been prepared by the academic program.

(D) The student no longer meets age eligibility requirements.

(g) All students graduating under this section must be provided with a summary of academic achievement and functional performance as described in 34 Code of Federal Regulations (CFR), §300.305(e)(3). This summary must consider, as appropriate, the views of the parent and student and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals. An evaluation as required by 34 CFR, §300.305(e)(1), must be included as part of the summary for a student graduating under subsections (b)(2); (b)(3)(A), (B), or (C); or (f)(4)(A), (B), or (C) of this section.

(h) Students who participate in graduation ceremonies but who are not graduating under subsections (b)(2); (b)(3)(A), (B), or (C); or (f)(4)(A), (B), or (C) of this section and who will remain in school to complete their education do not have to be evaluated in accordance with subsection (g) of this section.

(i) Employability and self-help skills referenced under subsections (b)(3) and (f)(4) of this section are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.

(j) For students who receive a diploma according to subsections (b)(2); (b)(3) (A), (B), or (C); or (f)(4)(A), (B), or (C) of this section, the ARD committee must determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.

(k) For purposes of this section, modified curriculum and modified content refer to any reduction of the amount or complexity of the required knowledge and skills in Chapters 110- 117, 126-128, and 130 of this title. Substitutions that are specifically authorized in statute or rule must not be considered modified curriculum or modified content.

Statutory Authority: The provisions of this §89.1070 issued under Texas Education Code, §§28.025, 29.001, 29.003, 29.004, 29.005, 39.023, 48.003, and 48.102; Texas Government Code, §392.002; and 34 Code of Federal Regulations, §§300.8, 300.100, 300.101, 300.102, 300.149, 3..0305, 300.306, 300.307, 300.308, 300.309, 300.310, 300.311, 300.320, 300.323, and 300.600.

Source: The provisions of this §89.1070 adopted to be effective March 6, 2001, 26 TexReg 1837; amended to be effective August 1, 2002, 27 TexReg 3061; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective August 22, 2011, 36 TexReg 413; amended to be effective January 1, 2015, 39 TexReg 10446; amended to be effective September 16, 2015, 40 TexReg 6107; amended to be effective February 15, 2018, 43 TexReg 763; amended to be effective March 14, 2021, 46 TexReg 1466; amended to be effective October 5, 2021, 46 TexReg 6533.

§89.1075. General Program Requirements and Local District Procedures.

(a) Each school district must maintain an eligibility folder for each student receiving special education and related services, in addition to the student's cumulative record. The eligibility folder must include, but will not be limited to, copies of referral data; documentation of notices and consents; evaluation reports and supporting data; admission, review, and dismissal (ARD) committee reports; and the student's individualized education programs (IEPs) and supporting data.

(b) Each school district must develop policies, procedures, programs, and practices that are consistent with the state's established policies, procedures, programs, and services to implement the Individuals with Disabilities Education Act.

(c) For school districts providing special education services to students with visual impairments, there must be written procedures as required in Texas Education Code (TEC), §30.002(c)(10).

(d) Each school district must ensure that each teacher who provides instruction to a student with disabilities:

(1) has access to relevant sections of the student's current IEP;

(2) is informed of the teacher's specific responsibilities related to implementation of the IEP, such as goals and objectives, and of needed accommodations, modifications, and supports for the student; and

(3) has an opportunity to request assistance regarding implementation of the student's IEP.

(e) Each school district must develop a process to be used by a teacher who instructs a student with a disability in a general education classroom setting:

(1) to request a review of the student's IEP;

(2) to provide input in the development of the student's IEP;

(3) that provides for a timely district response to the teacher's request; and

(4) that provides for notification to the student's parent or legal guardian of that response.

(f) Students with disabilities must have available an instructional day commensurate with that of students without disabilities. The ARD committee must determine the appropriate instructional setting and length of day for each student, and these must be specified in the student's IEP.

(g) School districts that contract for services from nonpublic day schools or residential placements must do so in accordance with 34 Code of Federal Regulations (CFR), §300.147, and §89.1092 and §89.1094 of this title (relating to Contracting for Nonpublic Residential Placements for the Provision of a Free Appropriate Public Education (FAPE) and Contracting for Nonpublic or Non-District Operated Day Placements for the Provision of a Free Appropriate Public Education (FAPE)).

(h) Whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education to the student, the school district must provide prior written notice as required in 34 CFR, §300.503, including providing the notice in the parent's native language or other mode of communication. This notice must be provided to the parent at least five school days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.

(i) The transition and employment designee required of each school district or shared services arrangement by TEC, §29.011, must complete the required training as developed by the commissioner of education and provide information about transition requirements and coordination among parents, students, and appropriate state agencies to ensure that school staff can communicate and collaborate effectively.

Statutory Authority: The provisions of this §89.1075 issued under Texas Education Code, §§29.001, 29.005, 30.002, and 48.102, and 34 Code of Federal Regulations, §§300.101, 300.111, 300.147, and 300.201.

Source: The provisions of this §89.1075 adopted to be effective September 1, 1996, 21 TexReg 7240; amended to be effective March 6, 2001, 26 TexReg 1837; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective January 1, 2015, 39 TexReg 10446; amended to be effective February 15, 2018, 43 TexReg 763; amended to be effective March 14, 2021, 46 TexReg 1466; amended to be effective August 22, 2024, 49 TexReg 2910.

§89.1076. Interventions and Sanctions.

The Texas Education Agency (TEA) must establish and implement a system of interventions and sanctions in accordance with the Individuals with Disabilities Education Act, 20 United States Code, §§1400 et seq.; Texas Education Code (TEC), §29.010; TEC, Chapter 39; and TEC, Chapter 39A, as necessary to ensure program effectiveness and compliance with federal and state requirements regarding the implementation of special education and related services. TEA may combine any intervention and sanction. The system of interventions and sanctions will include, but not be limited to, the following:

(1) onsite review for failure to meet program or compliance requirements;

(2) required program or compliance audits, paid for by the district;

(3) required submission of corrective actions, including, but not limited to, compensatory services, paid for by the district;

(4) required technical assistance and support, paid for by the district;

(5) public release of program or compliance review or audit findings;

(6) special investigation and/or follow-up verification visits;

(7) required public hearing conducted by the local school board of trustees;

(8) assignment of a monitor, conservator, or management team, as these terms are defined in TEC, Chapter 39A, paid for by the district;

(9) hearing before the commissioner of education or designee;

(10) placing specific conditions on grant funds, reduction in payment, required redirection of funds, or withholding of funds;

(11) lowering of the special education monitoring/compliance status and/or the accreditation rating of the district; and/or

(12) other authorized interventions and sanctions as determined by the commissioner.

Statutory Authority: The provisions of this §89.1076 issued under Texas Education Code, §§29.001, 29.010, 39A.001, and 39A.002, and 34 Code of Federal Regulations, §§300.600.

Source: The provisions of this §89.1076 adopted to be effective March 6, 2001, 26 TexReg 1837; amended to be effective June 7, 2004, 29 TexReg 5608; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective January 1, 2015, 39 TexReg 10446; amended to be effective August 22, 2024, 49 TexReg 2910.

§89.1080. Regional Day School Program for the Deaf.

In accordance with Texas Education Code, §§30.081-30.087, local school districts shall have access to regional day school programs for the deaf operated by school districts at sites previously established by the State Board of Education. Any student who is deaf or hard of hearing with a disability that severely impairs processing linguistic information through hearing, even with recommended amplification, and that adversely affects educational performance shall be eligible for consideration for the Regional Day School Program for the Deaf, subject to the admission, review, and dismissal committee recommendations.

Statutory Authority: The provisions of this §89.1080 issued under 34 Code of Federal Regulations, §§300.149, 300.151-300.153, 300.504, and 300.600, and Texas Education Code, §§29.001, 30.081, 30.082, 30.083, 30.084, 30.085, 30.086, and 30.087.

Source: The provisions of this §89.1080 adopted to be effective September 1, 1996, 21 TexReg 7240; amended to be effective January 18, 2023, 48 TexReg 133.

§89.1085. Referral for the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf Services.

(a) A student's admission, review, and dismissal (ARD) committee may place the student at the Texas School for the Blind and Visually Impaired (TSBVI) or the Texas School for the Deaf (TSD) in accordance with the provisions of 34 Code of Federal Regulations (CFR), Part 300; the Texas Education Code (TEC), including, specifically, §§30.021, 30.051, and 30.057; and the applicable rules of this subchapter.

(b) In the event that a student is placed by his or her ARD committee at either the TSBVI or the TSD, the student's "resident school district," as defined in subsection (e) of this section, shall be responsible for assuring that a free appropriate public education (FAPE) is provided to the student at the TSBVI or the TSD, as applicable, in accordance with the Individuals with Disabilities Education Act (IDEA), 20 United States Code (USC), §§1400 et seq.; 34 CFR, Part 300; state statutes; and rules of the State Board of Education (SBOE), the State Board for Educator Certification (SBEC), and the commissioner of education. If representatives of the resident school district and representatives of the TSBVI or the TSD disagree, as members of a student's ARD committee, with respect to a recommendation by one or more members of the student's ARD committee that the student be evaluated for placement, initially placed, or continued to be placed at the TSBVI or TSD, as applicable, the representatives of the resident school district and the TSBVI or TSD, as applicable, may seek resolution through the mediation procedures adopted by the Texas Education Agency or through any due process hearing to which the resident school district or the TSBVI or the TSD are entitled under the IDEA, 20 USC, §§1400, et seq.

(c) When a student's ARD committee places the student at the TSBVI or the TSD, the student's resident school district shall comply with the following requirements.

(1) For each student, the resident school district shall list those services in the student's individualized education program (IEP) which the TSBVI or the TSD can appropriately provide.

(2) The district may make an onsite visit to verify that the TSBVI or the TSD can and will offer the services listed in the individual student's IEP and to ensure that the school offers an appropriate educational program for the student.

(3) For each student, the resident school district shall include in the student's IEP the criteria and estimated timelines for returning the student to the resident school district.

(d) In addition to the provisions of subsections (a)-(c) of this section, and as provided in TEC, §30.057, the TSD shall provide services in accordance with TEC, §30.051, to any eligible student with a disability for whom the TSD is an appropriate placement if the student has been referred for admission by the student's parent or legal guardian, a person with legal authority to act in place of the parent or legal guardian, or the student, if the student is age 18 or older, at any time during the school year if the referring person chooses the TSD as the appropriate placement for the student rather than placement in the student's resident school district or regional program determined by the student's ARD committee. For students placed at the TSD pursuant to this subsection, the TSD shall be responsible for assuring that a FAPE is provided to the student at the TSD, in accordance with IDEA, 20 USC, §§1400, et seq.; 34 CFR, Part 300; state statutes; and rules of the SBOE, the SBEC, and the commissioner.

(e) For purposes of this section and §89.1090 of this title (relating to Transportation of Students Placed in the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf), the "resident school district" is the school district in which the student would be enrolled under TEC, §25.001, if the student were not placed at the TSBVI or the TSD. If the student is enrolled in an open-enrollment charter school at the time of placement in the TSBVI or TSD, then the open-enrollment charter school is considered the resident school district for purposes of this section and §89.1090 of this title, since the student's IEP will include the criteria and estimated timelines for returning the student to that school.

Statutory Authority: The provisions of this §89.1085 issued under Texas Education Code, §§29.001, 30.021, 30.051, 30.057, and 34 Code of Federal Regulations, §§300.101, 300.114,and 300.116.

Source: The provisions of this §89.1085 adopted to be effective March 6, 2001, 26 TexReg 1837; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective August 22, 2024, 49 TexReg 2910.

§89.1090. Transportation of Students Placed in the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf.

(a) For each student placed by the student's admission, review, and dismissal (ARD) committee in the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf that includes placement at the residential campus, the resident school district, as defined in §89.1085 of this title (relating to Referral for the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf Services), shall be responsible for transportation from the campus as well as the return to campus at the beginning and end of school terms and for regularly scheduled school holidays when all students are expected to leave the residential campus.

(b) The resident school district is not responsible for transportation costs for students placed in these settings by their parents.

(c) Transportation costs shall not exceed state approved per diem and mileage rates unless excess costs can be justified and documented. Transportation shall be arranged by the school using the most cost efficient means.

(d) When it is necessary for the safety of the student, as determined by the ARD committee and as documented in the student's individualized education program, for an adult designated by the ARD committee to accompany the student, round-trip transportation for that adult shall also be provided.

(e) The resident school district and the school shall coordinate to ensure that students are transported safely, including the periods of departure and arrival.

Statutory Authority: The provisions of this §89.1090 issued under Texas Education Code, §29.001 and §30.087.

Source: The provisions of this §89.1090 adopted to be effective September 1, 1996, 21 TexReg 7240; amended to be effective March 6, 2001, 26 TexReg 1837; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective August 22, 2024, 49 TexReg 2910.

§89.1092. Contracting for Nonpublic Residential Placements for the Provision of a Free Appropriate Public Education (FAPE).

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

(1) School district--The definition of a school district includes independent school districts established under Texas Education Code (TEC), Chapter 11, Subchapters A-F, and open-enrollment charter schools established under TEC, Chapter 12, Subchapter D.

(2) Nonpublic residential program--A nonpublic residential program includes the provision of special education and related services to one or more Texas public school students by someone other than school district personnel at a facility not operated by a school district. A student placed in this program has been determined by his or her admission, review, and dismissal (ARD) committee to require a residential placement in order to facilitate the student's attainment of reasonable educational progress and to provide the student a free appropriate public education (FAPE). It is not a placement intended primarily for the provision of medical care and treatment.

(3) Nonpublic residential program provider--A nonpublic residential program provider is a public or private entity with one or more facilities that contracts with a school district for the provision of some or all of a student's special education and related services when the school district is unable to provide those services and maintains current and valid licensure by the Texas Department of Family and Protective Services, the Texas Health and Human Services Commission, or another appropriate state agency. A provider that a school district contracts with only for the provision of related services is not subject to the requirements of this section.

(b) Nonpublic residential program requirements. A school district may contract with a nonpublic residential program provider when the student's ARD committee determines that a residential placement is necessary in order for the student to receive a FAPE in accordance with the requirements of this section.

(1) Before a student's ARD committee places a student with a disability in, or refers a student to, a nonpublic residential program, the ARD committee shall initiate and conduct a meeting to develop an individualized education program (IEP) for the student in accordance with 34 Code of Federal Regulations (CFR), §§300.320-300.325, state statutes, and commissioner of education rules in this chapter'.

(2) Before a student's ARD committee places a student with a disability in, or refers a student with a disability to, a nonpublic residential program, the district shall initiate and conduct an in-person, onsite review of the program provider's facility and program to ensure that the program is appropriate for meeting the student's educational needs.

(3) The appropriateness of the placement and the facility shall be documented in the IEP annually. The student's ARD committee may only recommend a nonpublic residential program if the committee determines that the nature and severity of the student's disability and special education needs are such that the student cannot be satisfactorily educated in the school district.

(A) The student's IEP must list which services the school district is unable to provide and which services the nonpublic residential program will provide.

(B) At the time the ARD committee determines placement, the ARD committee shall establish, in writing, criteria and a projected date for the student's return to the school district and document this information in the IEP.

(C) The school district shall make a minimum of two onsite, in-person visits annually, one announced and one unannounced, and more often if directed by the Texas Education Agency (TEA), to:

(i) verify that the program provider can and will provide the services listed in the student's IEP that the provider has agreed to provide to the student;

(ii) obtain written verification that the facility meets minimum standards for health and safety and holds all applicable local and state accreditation and permit requirements;

(iii) verify that the program provider's staff who work with the student have been subject to criminal background checks (to include fingerprinting) that meet the standards applicable to public school employees;

(iv) verify that the program provider has developed written policies, procedures, and operating guidelines that set forth necessary standards and steps to be followed to ensure the student maintains the same rights as other public school students with disabilities, including when the student is subject to emergency behavioral interventions or disciplinary actions, as well as to ensure the prohibition of aversive techniques as defined by TEC, §37.0023; and

(v) verify that the educational program provided at the facility is appropriate and the placement is the least restrictive environment for the student.

(4) The placement of more than one student in the same facility may be considered in the same onsite visit to the facility. However, the IEP of each student must be individually reviewed and a determination of appropriateness of placement and service must be made for each student.

(5) When a student who is placed by a school district in a nonpublic residential program changes his or her residence to another Texas school district and the student continues in the contracted placement, the school district that negotiated the contract shall be responsible for the residential contract for the remainder of the school year.

(c) Notification. Within 30 calendar days from an ARD committee's decision to place or continue the placement of a student in a nonpublic residential program, a school district must electronically submit to TEA notice of, and information regarding, the placement in accordance with submission procedures specified by TEA.

(1) If the nonpublic residential program provider is on the commissioner's list of approved providers, TEA will review the student's IEP and placement as required by 34 CFR, §300.120, and, in the case of a placement in or referral to a private school or facility, 34 CFR, §300.146. After review, TEA will notify the school district whether federal or state funds for the program placement are approved. If TEA does not approve the use of funds, it will notify the school district of the basis for the non-approval.

(2) If the nonpublic residential program provider is not on the commissioner's list of approved providers, TEA will begin the approval procedures described in subsection (d) of this section. School districts must ensure there is no delay in implementing a child's IEP in accordance with 34 CFR, §300.103(c).

(3) If a nonpublic residential program placement is ordered by a special education hearing officer or court of competent jurisdiction, the school district must notify TEA of the order within 30 calendar days. The program provider serving the student is not required to go through the approval procedures described in subsection (d) of this section for the ordered placement. If, however, the school district or other school districts intend to place other students in the program, the program provider will be required to go through the approval procedures to be included on the commissioner's list of approved providers.

(d) Approval of a nonpublic residential program. Nonpublic residential program providers must have their educational programs approved for contracting purposes by the commissioner. Approvals and reapprovals will only be considered for those providers that have a contract already in place with a school district for the placement of one or more students or that have a pending request from a school district. Reapproval can be for one, two, or three years, at the discretion of TEA.

(1) For a program provider to be approved or reapproved, the school district must electronically submit to TEA notice of, and information regarding, the placement in accordance with submission procedures specified by TEA. TEA shall begin approval procedures and conduct an onsite visit to the provider's facility within 30 calendar days after TEA has been notified by the school district and has received the required submissions as outlined by TEA. Initial approval of the provider shall be for one calendar year.

(2) The program provider may be approved or reapproved only after, at minimum, a programmatic evaluation and a review of personnel qualifications, adequacy of physical plant and equipment, and curriculum content.

(3) TEA may place conditions on the provider to ensure the provision of a FAPE for students who have been placed in a nonpublic residential program during the provider's approval period or during a reapproval process.

(4) If TEA does not approve, does not reapprove, or withdraws an approval from a program provider, a school district must take steps to remove any students currently placed at the provider's facility, or cancel a student's planned placement, as expeditiously as possible.

(5) TEA may conduct announced or unannounced onsite visits at a program provider's facility that is serving one or more Texas public school students in accordance with this section and will monitor the program provider's compliance with the requirements of this section.

(e) Criteria for approval. Requests for approval of state and federal funding for nonpublic residential program placements shall be negotiated on an individual student basis through a residential application submitted by the school district to TEA.

(1) A residential application may be submitted for educational purposes only. The residential application shall not be approved if the application indicates that the:

(A) placement is due primarily to the student's medical problems;

(B) placement is due primarily to problems in the student's home;

(C) district does not have a plan, including criteria and a projected date, for the student's return to the local school program;

(D) district did not attempt to implement lesser restrictive placements prior to residential placement (except in emergency situations as documented by the student's ARD committee);

(E) placement is not cost effective when compared with other alternative placements; or

(F) residential facility provides unfundable or unapprovable services.

(2) The placement, if approved by TEA, shall be funded as follows:

(A) the education cost of nonpublic residential program contracts shall be funded with state funds on the same basis as nonpublic day program contract costs according to TEC, §48.102;

(B) related services and residential costs for nonpublic residential program contracts shall be funded from a combination of fund sources. After expending any other available funds, the district must expend its local tax share per average daily attendance and 25% of its Individuals with Disabilities Education Act, Part B (IDEA-B), formula base planning amount (or an equivalent amount of state and/or local funds) for related services and residential costs. If this is not sufficient to cover all costs of the placement, the district through the residential application process may receive IDEA-B discretionary residential funds to pay the balance of the nonpublic residential contract placement(s) costs; and

(C) funds generated by the formula for residential costs described in subparagraph (B) of this paragraph shall not exceed the daily rate recommended by the Texas Department of Family and Protective Services for the general residential operation intense service level of care.

(3) Contracts between school districts and approved nonpublic residential program providers shall not begin prior to August 1 of the contracted program year and must not extend past July 31.

(4) Amendments to a contract must be electronically submitted to TEA in accordance with submission procedures specified by TEA no later than 30 calendar days from the change in placement or services.

(f) Contract for out-of-state nonpublic residential programs. School districts that contract for out-of-state nonpublic residential programs shall do so in accordance with the rules in this section, except that the program provider must be approved by the appropriate agency in the state in which the facility is located rather than by TEA.

Statutory Authority: The provisions of this §89.1092 issued under Texas Education Code, §§29.001, 29.008, and 48.102, and 34 Code of Federal Regulations, §§300.101, 300.129, and 300.147.

Source: The provisions of this §89.1092 adopted to be effective March 14, 2021, 46 TexReg 1466; amended to be effective August 22, 2024, 49 TexReg 2910.

§89.1094. Contracting for Nonpublic or Non-District Operated Day Placements for the Provision of a Free Appropriate Public Education (FAPE).

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Nonpublic or non-district operated day program--A nonpublic or non-district operated day program includes the provision of special education and related services to one or more Texas public school students during school hours by someone other than school district personnel in a facility not operated by a school district. A student placed in this program has been determined by his or her admission, review, and dismissal (ARD) committee to require a day placement in order to facilitate the student's attainment of reasonable educational progress and to provide the student a free appropriate public education (FAPE).

(2) Nonpublic or non-district operated day program provider--A nonpublic or non-district operated day program provider is an entity with one or more facilities that contracts with a school district for the provision of some or all of a student's special education and related services when the school district is unable to provide these services. These providers include:

(A) a county system operating under application of former law as provided in Texas Education Code (TEC), §11.301;

(B) a regional education service center established under TEC, Chapter 8;

(C) a nonpublic day school; or

(D) any other public or private entity with which a school district enters into a contract under TEC, §11.157(a), for the provision of special education services in a facility not operated by a school district.

(3) School district--The definition of a school district includes independent school districts established under TEC, Chapter 11, Subchapters A-F, and open-enrollment charter schools established under TEC, Chapter 12, Subchapter D.

(b) Nonpublic or non-district operated day program requirements. A school district may contract with a nonpublic or non-district operated day program provider in accordance with the requirements in this section.

(1) Before a student's ARD committee places a student with a disability in, or refers a student to, a nonpublic or non-district operated day program, the ARD committee shall initiate and conduct a meeting to develop an individualized education program (IEP) for the student in accordance with 34 Code of Federal Regulations (CFR), §§300.320-300.325, state statutes, and commissioner of education rules in this chapter.

(2) Before a student's ARD committee places a student with a disability in, or refers a student to, a nonpublic or non-district operated day program, the district shall initiate and conduct an onsite, in-

person review of the program provider's facility to ensure that the program is appropriate for meeting the student's educational needs.

(3) The appropriateness of the placement and the facility shall be documented in the IEP annually. The student's ARD committee may only recommend a nonpublic or non-district operated day program if the committee determines that the nature and severity of the student's disability and special education needs are such that the student cannot be satisfactorily educated in the school district.

(A) The student's IEP must list which services the school district is unable to provide and which services the program will provide.

(B) At the time the ARD committee determines placement, the ARD committee shall establish, in writing, criteria and a projected date for the student's return to the school district and document this information in the IEP.

(C) The school district shall make a minimum of two onsite, in-person visits annually, one announced and one unannounced, and more often if directed by TEA, to:

(i) verify that the program provider can, and will, provide the services listed in the student's IEP that the provider has agreed to provide to the student;

(ii) obtain written verification that the facility meets minimum standards for health and safety and holds all applicable local and state accreditation and permit requirements;

(iii) verify that the program provider's staff who work with the student have been subject to criminal background checks (to include fingerprinting) that meet the standards applicable to public school employees;

(iv) verify that the program provider has developed written policies, procedures, and operating guidelines that set forth necessary standards and steps to be followed to ensure the student maintains the same rights as other public school students with disabilities, including when the student is subject to emergency behavioral interventions or disciplinary actions, as well as to ensure the prohibition of aversive techniques as defined by TEC, §37.0023; and

(v) verify that the educational program provided at the facility is the least restrictive environment for the student.

(4) The placement of more than one student in the same facility may be considered in the same onsite visit to the facility. However, the IEP of each student must be individually reviewed, and a determination of appropriateness of placement and services must be made for each student.

(c) Notification. Within 30 calendar days from an ARD committee's decision to place or continue the placement of a student in a nonpublic or non-district operated day program, a school district must electronically submit to the Texas Education Agency (TEA) notice of, and information regarding, the placement in accordance with submission procedures specified by TEA.

(1) If the nonpublic or non-district operated day program provider is on the commissioner's list of approved providers, TEA will review the student's IEP and placement as required by 34 CFR, §300.120, and, in the case of a placement in or referral to a private school or facility, 34 CFR, §300.146. After review, TEA will notify the school district whether federal or state funds for the program placement are approved. If TEA does not approve the use of funds, it will notify the school district of the basis for the non-approval.

(2) If the nonpublic or non-district day program provider is not on the commissioner's list of approved providers, TEA will begin the approval procedures described in subsection (d) of this section. School districts must ensure there is no delay in implementing a child's IEP in accordance with 34 CFR, §300.103(c).

(3) If a nonpublic or non-district operated day program placement is ordered by a special education hearing officer or court of competent jurisdiction, the school district must notify TEA of the order within 30 calendar days. The program provider serving the student is not required to go through

the approval procedures described in subsection (d) of this section for the ordered placement. If, however, the school district or other school districts intend to place other students in the program, the program provider will be required to go through the approval procedures to be included on the commissioner's list of approved providers.

(d) Approval of the nonpublic or non-district operated day program. Nonpublic or non-district operated day program providers must have their educational programs approved for contracting purposes by the commissioner. Approvals and reapprovals will only be considered for those providers that have a contract already in place with a school district for the placement of one or more students or that have a pending request from a school district. Reapproval can be for one, two, or three years, at the discretion of TEA.

(1) For a program provider to be approved or reapproved, the school district must electronically submit to TEA notice of, and information regarding, the placement in accordance with submission procedures specified by TEA. TEA shall begin approval procedures and conduct an onsite visit to the provider's facility within 30 calendar days after TEA has been notified by the school district and has received the required submissions as outlined by TEA. Initial approval of the provider shall be for one calendar year.

(2) The program provider may be approved or reapproved only after, at minimum, a programmatic evaluation and a review of personnel qualifications, adequacy of physical plant and equipment, and curriculum content.

(3) TEA may place conditions on the provider to ensure the provision of a FAPE for students who have been placed in a nonpublic or non-district operated day program during the provider's approval period or during a reapproval process.

(4) If TEA does not approve, does not reapprove, or withdraws an approval from a program provider, a school district must take steps to remove any students currently placed at the provider's facility, or cancel a student's planned placement, as expeditiously as possible.

(5) TEA may conduct announced or unannounced onsite visits at a program provider's facility that is serving one or more Texas public school students in accordance with this section and will monitor the program provider's compliance with the requirements of this section.

(e) Funding procedures and other requirements. The cost of nonpublic or non-district operated day program placements will be funded according to TEC, §48.102 (Special Education); §89.1005(e) of this title (relating to Instructional Arrangements and Settings); and §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook).

(1) Contracts between school districts and approved nonpublic or non-district operated day program providers shall not begin prior to August 1 of the contracted program year and must not extend past July 31.

(2) Amendments to a contract must be electronically submitted to TEA in accordance with submission procedures specified by TEA no later than 30 calendar days from the change in placement or services.

(3) If a student who is placed in a nonpublic or non-district operated day program by a school district changes his or her residence to another Texas school district during the school year, the school district must notify TEA within 10 calendar days of the date on which the school district ceased contracting with the program provider for the student's placement. The student's new school district must meet the requirements of 34 CFR, §300.323(e), by providing comparable services to those described in the student's IEP from the previous school district until the new school district either adopts the student's IEP from the previous school district or develops, adopts, and implements a new IEP. The new school district must comply with all procedures described in this section for continued or new program placement.

Statutory Authority: The provisions of this §89.1094 issued under Texas Education Code, §29.001 and §48.102, and 34 Code of Federal Regulations, §§300.101, 300.129, and 300.147.

Source: The provisions of this §89.1094 adopted to be effective November 10, 2019, 44 TexReg 6876; amended to be effective March 14, 2021, 46 TexReg 1466; amended to be effective August 22, 2024, 49 TexReg 2910.

§89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities.

(a) Except as specifically provided in this section, in accordance with 34 Code of Federal Regulations (CFR), §300.137, no eligible student who has been placed by his or her parent(s) in a private school or facility has an individual right to receive some or all of the special education and related services that the student would receive if he or she were enrolled in a public school district. Except as specifically set forth in this section, a school district's obligations with respect to students placed by their parents in private schools are governed by 34 CFR, §§300.130-300.144.

(1) For purposes of subsections (a) and (d) of this section only, private school is defined as a private elementary or secondary school, including any pre-school, religious school, and institutional day or residential school, that:

(A) as required by 34 CFR, §300.13 and §300.130, is a nonprofit entity that meets the definition of nonprofit in 34 CFR, §77.1; and

(B) provides elementary or secondary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and formal review and documentation of student progress.

(2) A home school must meet the requirements of paragraph (1)(B) of this subsection, but not paragraph (1)(A) of this subsection, to be considered a private school for purposes of subsections (a) and (d) of this section.

(b) When a student with a disability who has been placed by his or her parents directly in a private school or facility is referred to the local school district, the local district shall convene an admission, review, and dismissal (ARD) committee meeting to determine whether the district can offer the student a free appropriate public education (FAPE). If the district determines that it can offer a FAPE to the student, the district is not responsible for providing educational services to the student, except as provided in 34 CFR, §§300.130-300.144, or subsection (e) of this section, until such time as the parents choose to enroll the student in public school full time.

(c) Parents of an eligible student ages 3 or 4 shall have the right to "dual enroll" their student in both the public school and the private school beginning on the student's third birthday and continuing until the end of the school year in which the student turns five or until the student is eligible to attend a district's public school kindergarten program, whichever comes first, subject to paragraphs (1)-(3) of this subsection. The public school district where a student resides is responsible for providing special education and related services to a student whose parents choose dual enrollment.

(1) The student's ARD committee shall develop an individualized education program (IEP) designed to provide the student with a FAPE in the least restrictive environment appropriate for the student.

(2) From the IEP, the parent and the district shall determine which special education and/or related services will be provided to the student and the location where those services will be provided, based on the requirements concerning placement in the least restrictive environment set forth in 34 CFR, §§300.114-300.120, and the policies and procedures of the district.

(3) For students served under the provisions of this subsection, the school district shall be responsible for the employment and supervision of the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided shall be consistent with those provided for students enrolled only in the public school and shall remain the property of the school district.

(d) Parents of an eligible student ages 3 or 4 who decline dual enrollment for their student may request a services plan as described in 34 CFR, §§300.130-300.144. The public school district where the private school is located is responsible for the development of a services plan, if the student is designated to receive services under 34 CFR, §300.132.

(e) The school district shall provide special transportation with federal funds only when the ARD committee determines that the condition of the student warrants the service in order for the student to receive the special education and related services (if any) set forth in the IEP.

(f) Complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (c) of this section may be filed with the Texas Education Agency under the procedures in 34 CFR, §§300.151-300.153. Additionally, parents may request mediation as outlined in 34 CFR, §300.506. The procedures in 34 CFR, §§300.300, 300.504, 300.507, 300.508, and 300.510-300.518 (relating to due process hearings) do not apply to complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (c).

Statutory Authority: The provisions of this §89.1096 issued under 34 Code of Federal Regulations, §§300.129, 300.130, 300.131, 300.132, 300.133, 300.134, 300.135, 300.136, 300.137, 300.138, 300.139, 300.140, 300.141, 300.142, 300.143, and 300.144.

Source: The provisions of this §89.1096 adopted to be effective March 6, 2001, 26 TexReg 1837; amended to be effective June 7, 2004, 29 TexReg 5608; amended to be effective November 11, 2007, 32 TexReg 8129.

Division 3. Memoranda of Understanding Affecting Special Education Students

§89.1100. Memorandum of Understanding on Coordination of Services to Disabled Persons.

Clarification of financial and service responsibilities of the Texas Department of Human Services, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Rehabilitation Commission, the Texas Commission for the Blind, the Texas Commission for the Deaf, Texas Department of Protective and Regulatory Services, Texas Interagency Council on Early Childhood Intervention, and the Texas Education Agency related to disabled persons are contained in the Memorandum of Understanding on Coordination of Services to Disabled Persons, which is adopted by reference as a rule of the Texas Education Agency. The complete text of the memorandum of understanding may be found in the rules of the Texas Department of Human Services, 40 Texas Administrative Code (TAC) Chapter 72. A copy of the memorandum of understanding is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

Statutory Authority: The provisions of this §89.1100 issued under Texas Education Code, §29.001, and the Texas Human Resources Code, §22.011.

Source: The provisions of this §89.1100 adopted to be effective September 1, 1996, 21 TexReg 7240.

§89.1115. Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities.

(a) Parties. The state agencies named in this subsection are parties to this memorandum of understanding (MOU) and will be collectively referred to as the "parties." The term "Health and Human Service (HHS) agencies" will refer to all parties except the Texas Education Agency, Texas Juvenile Probation Commission, and Texas Youth Commission.

(1) Texas Education Agency (TEA);

(2) Texas Department of Human Services (TDHS);

(3) Texas Department of Mental Health and Mental Retardation (TDMHMR);

(4) Texas Department of Health (TDH);

(5) Texas Department of Protective and Regulatory Services (PRS);

(6) Texas Interagency Council on Early Childhood Intervention (ECI);

(7) Texas Commission on Alcohol and Drug Abuse (TCADA);

(8) Texas Juvenile Probation Commission (TJPC); and

(9) Texas Youth Commission (TYC).

(b) Purpose. In accordance with Texas Education Code (TEC),§29.012(d), the purpose of this MOU is to:

(1) establish the respective responsibilities of school districts and of residential facilities (RFs) for the provision of a free appropriate public education (FAPE), as required by the Individuals with Disabilities Education Act (IDEA)(20 USC §1400 et seq.) and its subsequent amendments, including each requirement for children with disabilities who reside in those facilities;

(2) coordinate regulatory and planning functions of the parties;

(3) establish criteria for determining when a public school will provide educational services;

(4) provide for appropriate educational space when education services will be provided at the residential facility;

(5) establish measures designed to ensure the safety of students and teachers; and

(6) provide for binding arbitration consistent with Texas Government Code, Chapter 2009, and Civil Practice and Remedies Code, §154.027.

(c) Definitions. The following words and terms, when used in this MOU, shall have the following meaning, unless the context clearly indicates otherwise.

(1) Consistent with TEC, §5.001(8), "residential facility" (RF) means:

(A) a facility operated by a state agency or political subdivision, including a child placement agency, that provides 24-hour custody or care of a person 22 years of age or younger, if the person resides in the facility for detention, treatment, foster care, or any non-educational purpose; and

(B) any person or entity that contracts with or is funded, licensed, certified, or regulated by a state agency or political subdivision to provide custody or care for a person under subparagraph (A) of this paragraph. RFs include, but are not limited to:

(i) child care facilities or institutions;

(ii) independent foster group homes providing basic, therapeutic or rehabilitative services;

(iii) independent foster family homes providing basic, therapeutic or rehabilitative services;

(iv) agency foster family/group homes verified by a child placing agency licensed by PRS;

(v) intermediate care facilities for the mentally retarded (ICFs-MR);

(vi) psychiatric treatment centers;

(vii) therapeutic camps or ranches;

(viii) residential treatment centers licensed by PRS;

(ix) nursing facilities;

(x) TYC halfway houses and contract facilities;

(xi) emergency shelters;

(xii) hospitals;

(xiii) juvenile pre-adjudication detention facilities;

(xiv) juvenile post-adjudication secure correctional facilities;

(xv) residential facilities funded and/or licensed by TCADA;

(xvi) settings other than the student's natural or adoptive home in which residential services are provided in programs authorized by the Social Security Act, §1915(c); and

(xvii) state hospitals, state schools, and state centers operated by TDMHMR.

(2) "Student with a disability" means an individual who is eligible to receive special education and related services in accordance with IDEA and its implementing regulations, Code of Federal Regulations, Title 34, §§300.1 et seq., and state laws and rules, including, without limitation, TEC, Chapter 29, and Chapter 89 of this title (relating to Adaptations for Special Populations).

(3) Consistent with 20 USC §1401(8), "free appropriate public education" (FAPE) means special education and related services that:

(A) are provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of TEA;

(C) include preschool, elementary, or secondary school education; and

(D) are provided in conformity with the student's individualized education program (IEP).

(4) Consistent with 20 U. S. C. §1401(15), "local educational agency" (LEA) means any public authority, institution, or agency having administrative control and direction of a public elementary or secondary school, including a public charter school that is established as an LEA under state law.

(d) Terms of MOU. The parties agree to the following terms:

(1) The responsibilities of LEAs and RFs related to the provision of a FAPE to students with disabilities who reside in RFs are established as follows.

(A) LEAs must provide or ensure the provision of a FAPE to students with disabilities residing in RFs in accordance with IDEA, applicable federal regulations, and state laws and rules.

(i) Except as provided in paragraph (2) of this subsection, an LEA must provide or ensure the provision of a FAPE for a student with a disability residing in an RF located in the geographical area served by that LEA.

(ii) If an LEA places a student with a disability in an RF for educational purposes, the placing LEA must provide or ensure the provision of a FAPE to the student.

(B) Not later than the third day after the date a person 22 years of age or younger is placed in an RF, the RF must provide notification in accordance with TEC, §29.012(a), as follows:

(i) if the person placed in the RF is three years of age or older, the RF must notify the LEA in which the RF is located, unless the RF is an open-enrollment charter school or the RF has been designated as an LEA (e.g., TYC correctional facilities, Texas School for the Deaf, the University of Texas Medical Branch); or

(ii) if the person placed in the RF is younger than three years of age, the RF must notify a local early childhood intervention program in the area in which the RF is located.

(2) Regulatory and planning functions of the parties are coordinated as follows.

(A) The parties will require LEAs and RFs to:

(i) share, within a reasonable period of time and to the extent permitted by applicable statutes and regulations, all appropriate records and relevant information relating to a student with a disability. This subsection does not authorize the LEA to modify requirements for admission and enrollment into an LEA as set forth in TEC, Chapter 25. The records and information to be shared may include, but are not limited to:

(I) birth certificate or other identifying document that proves the student's age;

(II) medical history and medical records, including current immunization records and a history of infectious disease (e.g., Hepatitis B, tuberculosis), including a description of any behavioral characteristics related to the transmission of such disease;

(III) social history;

(IV) vision and hearing screening and evaluation;

(V) evaluation reports, including psychological, educational, related service, assistive technology and vocational evaluations, and behavioral assessments;

(VI) treatment plan of care or service;

(VII) educational history (e.g., previous educational placement information);

(VIII) any relevant court orders (e.g., orders related to placement in an RF, guardianship or conservatorship, or court-ordered services);

(IX) information regarding a student's movement from an RF to a subsequent residence, including but not limited to the date the student left the RF and the location of the student's subsequent residence; and

(X) name and phone number of contact persons representing the RF and the LEA; and

(ii) coordinate a student's individualized education program (IEP) and treatment plan of care or service. Coordination between an LEA and RF includes but is not limited to communication about responsibilities and timelines related to the development and implementation of the IEP and treatment plan, including permanency planning.

(B) TEA will require LEAs to provide:

(i) the name and phone number of the contact person representing the RF to the surrogate parent, upon assignment of the surrogate parent;

(ii) the name and phone number of the surrogate parent, upon assignment of the surrogate parent, to the contact person representing the RF; and

(iii) designation and training of surrogate parents in accordance with §89.1047 of this title (relating to Procedures for Surrogate and Foster Parents).

(C) TYC and the HHS agencies will provide the following notifications to TEA.

(i) TYC and the HHS agencies, other than PRS, will notify TEA when an RF opens, closes, expands, or reduces its capacity to provide services, if the notifying agency expects such action will have a significant effect on one or more LEAs. The notice will be provided to TEA before the RF opens, closes, expands, or reduces its capacity to provide services, or as soon thereafter as the notifying agency becomes aware of the action. If an RF is closing, the notifying TYC or HHS agency will request that the RF attempt to obtain any consent necessary to release to TEA and an LEA, information about a student with a disability residing in the RF, including the student's name, date of birth, social security number, disability, and name of the LEA to which the student will be moving. TEA will notify the affected LEA of the expected action so the LEA can adjust its capacity to serve students with disabilities.

(ii) PRS will provide TEA with a copy of the notice required by Texas Human Resources Code, §42.0461(a)(2). Additionally, PRS and TEA will explore possible use of PRS' Child Care Licensing Automation Support Services management system to generate information that may assist TEA in its effort to notify LEAs when an RF opens, closes, expands, or reduces its capacity to provide services.

(3) Criteria for determining when a public school will provide educational services are established as follows.

(A) TEA will ensure that the local school district provides a FAPE to all eligible students with disabilities, in the least restrictive environment (LRE), to the maximum extent appropriate, to meet the individual educational needs of the student as determined by a duly-constituted admission, review, and dismissal (ARD) committee, and in accordance with §89.1001 of this title (relating to Scope and Applicability).

(B) The student's ARD committee must determine the appropriate educational placement for the student, considering all available information regarding the educational needs of the student, and including the non-educational needs that may restrict the ability of the LEA to serve the student on a public school campus or other instructional setting. These non-educational needs could include the student's health and safety (e.g. substance abuse), and/or the student's placement in a restrictive RF program (e.g., juvenile incarceration or restrictive court-ordered placements). The ARD committee's determination must be individualized based on student need and not made on a categorical basis, such as the student's disability or residence in an RF. Further, ARD committees must not determine educational placement on the basis of what is most convenient to LEAs or RFs.

(4) When educational services will be provided at an RF, appropriate educational space will be determined as follows.

(A) The ARD committee must determine whether space available at the RF is appropriate for the provision of a FAPE. This determination must be based on the individual student's needs and the RF's available space.

(B) An ARD committee must find alternative locations for providing educational services if the ARD committee or RF determines that the RF has no appropriate available space.

(5) Measures designed to ensure the safety of students and teachers are established as follows.

(A) The parties will require RFs and LEAs to agree in writing to the staffing levels that will be maintained by both the RF and the LEA to ensure the safety of students and teachers while educational services are provided at an RF.

(B) TYC, TJPC, and HHS agencies will require RFs to communicate to LEA staff applicable safety, emergency, and security procedures to be followed while educational services are provided at an RF.

(6) Disputes concerning the implementation of this MOU will be resolved as follows.

(A) Local disputes. Resolution of disputes concerning implementation of this MOU between LEAs or between an LEA and an RF shall first be attempted at the local level. The specific issues involved in the dispute and possible solutions shall be identified and referred to local personnel authorized to make decisions necessary to resolve the dispute. If resolution is not reached after a reasonable period of time (not to exceed 45 calendar days unless the disputing entities agree otherwise), the LEA shall refer (and the RF may refer) the dispute to TEA for further negotiations toward a mutually agreeable resolution. TEA will contact the disputing entities and set up a meeting for this purpose. Local entities referring disputes to TEA shall identify:

(i) the nature of the dispute;

(ii) any resolutions agreed upon;

(iii) the issues that remain unresolved; and

(iv) the contact persons representing the disputing entities.

(B) State agency disputes. Resolution of disputes concerning implementation of this MOU between two or more parties must first be attempted at the staff level. If resolution is not reached after a reasonable period of time (not to exceed 45 calendar days unless the disputing parties agree otherwise), the disputing parties will refer the dispute to their

respective executive officers, or their designees for further negotiation. The appropriate state officials shall meet to seek resolution of the dispute.

(i) Mediation. If the chief executive officers of the disputing parties determine that the dispute cannot be resolved at their level, the disputing parties may pursue resolution through the use of mediation pursuant to the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2009.

(ii) Arbitration. If the disputing parties do not agree to pursue resolution of their dispute through mediation, or if mediation does not result in a resolution of their dispute, the disputing parties will participate in binding arbitration consistent with Texas Government Code, Chapter 2009, and Texas Civil Practice and Remedies Code, §154.027.

(7) Other terms of this MOU.

(A) This MOU shall be signed by the executive officers of the participating agencies and shall be effective upon signature by all.

(B) This MOU may be considered for expansion, modification, or amendment upon mutual agreement of the executive officers of the participating agencies.

(C) In the event that federal and/or state laws should be amended, federally interpreted, or judicially interpreted so as to render continued implementation of this MOU unreasonable or impossible, the participating agencies may agree to amend or terminate this MOU.

Statutory Authority: The provisions of this §89.1115 issued under Texas Education Code, §29.001 and §29.012.

Source: The provisions of this §89.1115 adopted to be effective August 6, 2002, 27 TexReg 6851.

Division 4. Special Education Funding

§89.1121. Distribution of State Funds.

(a) Procedures for counting the average daily attendance (ADA) of students receiving special education services in various instructional settings must be developed by the commissioner of education and included in the student attendance accounting handbook adopted under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook).

(b) State special education funds must be distributed to school districts on the basis of ADA of full-time equivalents of eligible students served in accordance with §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes).

(c) The special education attendance must be converted to contact hours by instructional arrangement and then to full-time equivalents. The full-time equivalent for each instructional arrangement is multiplied by the annual amount equal to the basic allotment or, if applicable, the sum of the basic allotment and the allotment under Texas Education Code (TEC), §48.101, and then multiplied by the weight for the instructional arrangement as prescribed in TEC, §48.102(a). Contact hours for any one student receiving special education services may not exceed six hours per day or 30 hours per week for funding purposes. The total contact hours generated per week is divided by 30 to determine the full-time equivalents. Special education full-time equivalents generated are deducted from the school district's ADA for purposes of the regular education allotment.

(d) The receipt of special education funds is contingent upon the operation of an approved comprehensive special education program in accordance with state and federal laws and regulations. No district may divert special education funds for other purposes, with the exception of administrative costs as defined in Chapter 105, Subchapter B, of this title (relating to Use of State Funds). Funds generated by full-time equivalents in one instructional arrangement may be spent on the overall special education program and are not limited to the instructional arrangement which generated the funds. The district must maintain separate accountability for the total state special education program fund within the general fund.

(e) A special education fund balance may be carried over to the next fiscal year but must be expended on the special education program in the subsequent year. State special education carryover funds cannot be used for administrative costs.

(f) Students who are at least three, but younger than 22, years of age on September 1 of the current scholastic year who participate in the regional day school program for the deaf may be counted as part of the district's ADA if they receive instruction from the basic program for at least 50% of the school day.

(g) Students from birth through age two with a visual impairment, who are deaf or hard of hearing, or both who are provided services by the district according to an individual family services plan (IFSP) must be enrolled on the district home or regional day school campus and must be considered eligible for ADA on the same basis as other students receiving special education services.

(h) Funding for the mainstream special education instructional arrangement must be based on the average daily attendance of the students in the arrangement multiplied by the annual amount equal to the basic allotment or, if applicable, the sum of the basic allotment and the allotment under TEC, §48.101, and the 1.15 weight as provided by TEC, §48.102(a). The attendance must not be converted to contact hours/full-time equivalents as with the other instructional arrangements.

Statutory Authority: The provisions of this §89.1121 issued under Texas Education Code, §29.001 and §48.102.

Source: The provisions of this §89.1121 adopted to be effective September 1, 1996, 21 TexReg 7240; amended to be effective March 6, 2001, 26 TexReg 1837; amended to be effective January 1, 2015, 39 TexReg 10446; amended to be effective October 5, 2021, 46 TexReg 6533.

§89.1125. Allowable Expenditures of State Special Education Funds.

(a) Persons paid from special education funds shall be assigned to instructional or other duties in the special education program and/or to provide support services to the regular education program in order for students with disabilities to be included in the regular program. Support services shall include, but not be limited to, collaborative planning, co-teaching, small group instruction with special and regular education students, direct instruction to special education students, or other support services determined necessary by the admission, review, and dismissal (ARD) committee for an appropriate program for the student with disabilities. Assignments may include duties supportive to school operations equivalent to those assigned to regular education personnel.

(b) Personnel assigned to provide support services to the regular education program as stated in subsection (a) of this section may be fully funded from special education funds.

(c) If personnel are assigned to special education on less than a full-time basis, except as stated in subsection (a) of this section, only that portion of time for which the personnel are assigned to students with disabilities shall be paid from state special education funds.

(d) State special education funds may be used for special materials, supplies, and equipment which are directly related to the development and implementation of individualized education programs (IEPs) of students and which are not ordinarily purchased for the regular classroom. Office and routine classroom supplies are not allowable. Special equipment may include instructional and assistive technology devices, audiovisual equipment, computers for instruction or assessment purposes, and assessment equipment only if used directly with students.

(e) State special education funds may be used to contract with consultants to provide staff development, program planning and evaluation, instructional services, assessments, and related services to students with disabilities.

(f) State special education funds may be used for transportation only to and from residential placements. Prior to using federal funds for transportation costs to and from a residential facility, a district must use state or local funds based on actual expenses up to the state transportation maximum for private transportation contracts.

(g) State special education funds may be used to pay staff travel to perform services directly related to the education of eligible students with disabilities. Funds may also be used to pay travel of staff (including administrators, general education teachers, and special education teachers and service providers) to attend staff development meetings for the purpose of improving performance in assigned positions directly related

to the education of eligible students with disabilities. In no event shall the purpose for attending such staff development meetings include time spent in performing functions relating to the operation of professional organizations. Funds may also be used to pay for the joint training of parents and special education, related services, and general education personnel.

Statutory Authority: The provisions of this §89.1125 issued under Texas Education Code, §29.001, and 34 Code of Federal Regulations, §§300.202, 300.203, 300.204, 300.205, 300.206, 300.208, and 300.705.

Source: The provisions of this §89.1125 adopted to be effective September 1, 1996, 21 TexReg 7240; amended to be effective March 6, 2001, 26 TexReg 1837; amended to be effective November 11, 2007, 32 TexReg 8129.

Division 5. Special Education and Related Service Personnel

§89.1131. Qualifications of Special Education, Related Service, and Paraprofessional Personnel.

(a) All special education and related service personnel must be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 Code of Federal Regulations, §300.156; the Texas Education Code (TEC), §§21.002, 21.003, and 29.304; or appropriate state agency credentials.

(b) In accordance with TEC, §29.0032, a provider of dyslexia instruction is not required to be certified in special education unless the provider is employed in a special education position that requires the certification.

(c) A teacher who holds a special education certificate or an endorsement may be assigned to any level of a basic special education instructional program serving eligible students 3-21 years of age, as defined in §89.1035(a) of this title (relating to Age Ranges for Student Eligibility), in accordance with the limitation of their certification, except for the following.

(1) Persons assigned to provide speech therapy instructional services must hold a valid Texas Education Agency certificate in speech and hearing therapy or speech and language therapy, or a valid state license as a speech/language pathologist.

(2) Teachers certified in the education of students with visual impairments must be available to students with visual impairments, including deaf-blindness, through one of the school district's instructional options, a shared services arrangement with other school districts, or an education service center.

(3) Teachers certified in the education of students who are deaf or hard of hearing must be available to students who are deaf or hard of hearing, including deaf-blindness, through one of the school district's instructional options, a regional day school program for the deaf, or a shared services arrangement with other school districts.

(4) The following provisions apply to physical education when an admission, review, and dismissal (ARD) committee has determined that a student requires specially designed instruction in physical education.

(A) When the ARD committee has made the determination and the arrangements are specified in the student's individualized education program, physical education may be provided by those authorized under §231.703 of this title (relating to Teacher of Adaptive Physical Education) and the following personnel:

(i) special education instructional or related service personnel who have the necessary skills and knowledge;

(ii) physical education teachers;

(iii) occupational therapists;

(iv) physical therapists; or

(v) occupational therapy assistants or physical therapy assistants working under supervision in accordance with the standards of their profession.

(B) When these services are provided by special education personnel, the district must document that they have the necessary skills and knowledge. Documentation may include, but need not be limited to, inservice records, evidence of attendance at seminars or workshops, or transcripts of college courses.

(5) Teachers assigned full-time or part-time to instruction of students from birth through age two with visual impairments, including deaf-blindness, must be certified in the education of students with visual impairments. Teachers assigned full-time or part-time to instruction of students from birth through age two who are deaf or hard of hearing, including deaf-blindness, must be certified in education for students who are deaf and hard of hearing.

(d) Paraprofessional personnel working as educational aides must be certified and may be assigned to work with eligible students, general and special education teachers, and related service personnel. Educational aides may also be assigned to assist students with special education transportation, serve as a job coach, or serve in support of community-based instruction. Educational aides paid from state administrative funds may be assigned to special education clerical or administrative duties.

(e) Interpreting services for students who are deaf must be provided by an interpreter who is certified in the appropriate language mode(s), if certification in such mode(s) is available. If certification is available, the interpreter must be a certified member of or certified by the Registry of Interpreters for the Deaf or the Texas Board for Evaluation of Interpreters.

(f) Orientation and mobility instruction must be provided by a certified orientation and mobility specialist who is certified by the Academy for Certification of Vision Rehabilitation and Education Professionals.

Statutory Authority: The provisions of this §89.1131 issued under Texas Education Code, §29.001, and 34 Code of Federal Regulations, §300.100 and §300.156.

Source: The provisions of this §89.1131 adopted to be effective September 1, 1996, 21 TexReg 7240, amended to be effective March 6, 2001, 26 TexReg 1837; amended to be effective August 1, 2002, 27 TexReg 3061; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective January 1, 2015, 39 TexReg 10446; amended to be effective October 5, 2021, 46 TexReg 6533; amended to be effective July 30, 2024, 49 TexReg 5507.

Division 6. Regional Education Service Center Special Education Programs

§89.1141. Education Service Center Regional Special Education Leadership.

Each regional education service center will provide leadership, training, and technical assistance in the area of special education for students with disabilities in accordance with the Texas Education Agency's (TEA's) focus on increasing student achievement and Texas Education Code, §8.051(d)(2) and (5), and will assist TEA in the implementation of 34 Code of Federal Regulations, §300.119.

Statutory Authority: The provisions of this §89.1141 issued under Texas Education Code, §§8.001, 8.002, 8.051, 8.052, 8.053, 8.054, and 29.001, and 34 Code of Federal Regulations, §300.12.

Source: The provisions of this §89.1141 adopted to be effective August 1, 2002, 27 TexReg 3061; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective July 23, 2024, 49 TexReg 5347.

Division 7. Dispute Resolution

§89.1150. General Provisions.

(a) It is the policy and intent of the Texas Education Agency (TEA) to encourage and support the resolution of any dispute that arises between a parent and a public education agency relating to the identification, evaluation, or educational placement of or the provision of a free appropriate public education (FAPE) to a student with a disability at the lowest level possible and in a prompt, efficient, and effective manner.

(b) The possible options for resolving disputes include, but are not limited to:

(1) meetings of the student's admission, review, and dismissal committee, including individualized education program (IEP) facilitation if offered by the public education agency in accordance with §89.1196 of this title (relating to Individualized Education Program Facilitation);

(2) meetings or conferences with the student's teachers;

(3) meetings or conferences, subject to the public education agency's policies, with the campus administrator, the special education director of the public education agency (or the shared services arrangement to which the public education agency may be a member), the superintendent of the public education agency, or the board of trustees of the public education agency;

(4) requesting state IEP facilitation in accordance with §89.1197 of this title (relating to State Individualized Education Program Facilitation);

(5) requesting mediation through the TEA in accordance with 34 Code of Federal Regulations (CFR), §300.506;

(6) filing a complaint with the TEA in accordance with 34 CFR, §300.153; or

(7) requesting a due process hearing through the TEA in accordance with 34 CFR, §§300.507-300.514.

Statutory Authority: The provisions of this §89.1150 issued under Texas Education Code, §§29.001, 29.019, and 29.020; and 34 Code of Federal Regulations, §§300.151, 300.152, and 300.153.

Source: The provisions of this §89.1150 adopted to be effective March 6, 2001, 26 TexReg 1837; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective December 31, 2013, 38 TexReg 9552; amended to be effective January 1, 2015, 39 TexReg 10446.

§89.1151. Special Education Due Process Hearings.

(a) A parent or public education agency may initiate a due process hearing as provided in 34 Code of Federal Regulations (CFR), §300.507 and §300.508.

(b) The Texas Education Agency will implement a one-tier system of hearings. The proceedings in hearings will be governed by the provisions of 34 CFR, §§300.507-300.515 and 300.532, if applicable, and this division.

(c) Beginning September 1, 2022, a parent or public education agency must request a hearing within two years of the date the parent or public education agency knew or should have known about the alleged action that serves as the basis for the request, unless tolled pursuant to 50 USC, §3936, as set forth in subsection (e) of this section. Prior to September 1, 2022, a parent or public education agency must request a hearing within one year of the date the parent or public education agency knew or should have known about the alleged action that serves as the basis for the request, unless tolled pursuant to 50 USC, §3936, as set forth in subsection (e) of this section.

(d) The timeline described in subsection (c) of this section does not apply to a parent if the parent was prevented from filing a request for a due process hearing due to:

(1) specific misrepresentations by the public education agency that it had resolved the problem forming the basis of the request for a hearing; or

(2) the public education agency's withholding of information from the parent that was required by 34 CFR, §300.1, et seq. to be provided to the parent.

(e) TEA will include in the Notice of Procedural Safeguards a statement that the statute of limitations for the parent of a student to request an impartial due process hearing under 20 USC, §1415(b), may be tolled if:

(1) the parent is an active-duty member of the armed forces, the Commissioned Corps of the National Oceanic and Atmospheric Administration, or the Commissioned Corps of the United States Public Health Service; and

(2) 50 USC, §3936, applies to the parent.

Statutory Authority: The provisions of this §89.1151 issued under Texas Education Code, §29.001, and 34 Code of Federal Regulations, §300.507.

Source: The provisions of this §89.1151 adopted to be effective March 6, 2001, 26 TexReg 1837; amended to be effective December 30, 2001, 26 TexReg 10536; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective November 28, 2012, 37 TexReg 9360; amended to be effective December 31, 2013, 38 TexReg 9552; amended to be effective March 1, 2017, 42 TexReg 760; amended to be effective February 15, 2018, 43 TexReg 766; amended to be effective June 7, 2022, 47 TexReg 3249.

§89.1165. Request for Special Education Due Process Hearing.

(a) A request for a due process hearing (due process complaint) must be in writing and must be filed with the Texas Education Agency (TEA) by electronic mail, mail, hand-delivery, or facsimile.

(b) The party filing a request for a hearing must forward a copy of the request to the non-filing party at the same time that the request is filed with the TEA. The timelines applicable to hearings will commence the calendar day after the non-filing party receives the request. Unless rebutted, it will be presumed that the non-filing party received the request on the date it is sent to the parties by the TEA.

(c) The request for a hearing must include:

(1) the name of the child;

(2) the address of the residence of the child;

(3) the name of the school the child is attending;

(4) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Assistance Act (42 United States Code §11434a(2)), available contact information for the child, and the name of the school the child is attending;

(5) a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

(6) a proposed resolution of the problem to the extent known and available to the party at the time.

(d) A party may not have a hearing until the party files a request for a hearing that meets the requirements of subsection (c) of this section.

(e) The TEA has developed a model form that may be used by parents and public education agencies to request a hearing. The form is available on request from the TEA and on the TEA website.

Statutory Authority: The provisions of this §89.1165 issued under Texas Education Code, §29.001, and 34 Code of Federal Regulations, §300.507.

Source: The provisions of this §89.1165 adopted to be effective March 6, 2001, 26 TexReg 1837; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective November 28, 2012, 37 TexReg 9360; amended to be effective December 31, 2013, 38 TexReg 9552; amended to be effective March 1, 2017, 42 TexReg 760; amended to be effective March 14, 2021, 46 TexReg 1466.

§89.1170. Impartial Hearing Officer.

(a) The Texas Education Agency (TEA) will maintain a pool of impartial hearing officers to conduct due process hearings. The TEA will assign cases to hearing officers who are private practice attorneys based on an alphabetical rotation. The TEA will assign cases to hearing officers who are employed by the State Office of Administrative Hearings (SOAH) in accordance with the procedures specified in the interagency contract between the TEA and SOAH. If, however, a request for a hearing relates to the same student who was involved in another hearing that was filed within the last 12 months, the TEA may assign the recently filed hearing request to the same hearing officer who presided over the previous hearing. In addition, the same hearing officer may be assigned to hearings involving siblings that are filed within 12 months of each other.

(b) If a hearing officer is also a mediator under §89.1193 of this title (relating to Special Education Mediation), that individual will not be assigned as hearing officer if he or she is the mediator in a pending mediation involving the same student who is the subject of the hearing or was the mediator in a previous mediation involving the student who is the subject of the hearing.

(c) A hearing officer must possess the knowledge and abilities described in 34 Code of Federal Regulations, §300.511(c), and must not be:

(1) an employee of the TEA or the public agency that is involved in the education or care of the child who is the subject of the hearing; or

(2) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing.

(d) A hearing officer is not an employee of the TEA solely because the individual is paid by the TEA to serve as a hearing officer.

(e) A hearing officer has the authority to administer oaths; call and examine witnesses; rule on motions, including discovery and dispositive motions; determine admissibility of evidence and amendments to pleadings; maintain decorum; schedule and recess the proceedings from day to day; and make any other orders as justice requires, including the application of sanctions as necessary to maintain an orderly hearing process.

(f) If a hearing officer is removed, dies, becomes disabled, or withdraws from a hearing before the completion of duties, the TEA will designate a substitute hearing officer to complete the performance of duties without the necessity of repeating any previous proceedings.

(g) A party to a hearing who has grounds to believe that the assigned hearing officer cannot afford the party a fair and impartial hearing due to bias, prejudice, or a conflict of interest may file a written request with the assigned hearing officer asking that the hearing officer recuse himself or herself from presiding over the hearing. Any such written request must state the grounds for the request and the facts upon which the request is based. Upon receipt of a request, the assigned hearing officer must review the request and determine the sufficiency of the grounds stated in the request. The hearing officer then must prepare a written order concerning the request and serve the order on the parties to the hearing within three business days of receiving the request. If the hearing officer finds that the grounds for recusal are insufficient, the TEA will assign a second hearing officer to review the request. The second hearing officer must rule on the request and serve a written order on the parties to the hearing within three business days of receiving the assignment. If the second hearing officer also determines that the grounds for recusal are insufficient, the assigned hearing officer will continue to preside over the hearing. If either the assigned hearing officer or the second hearing officer finds that the grounds for recusal are sufficient, the TEA will assign another hearing officer to preside over the remainder of the proceedings in accordance with the procedures in subsection (a) of this section.

Statutory Authority: The provisions of this §89.1170 issued under Texas Education Code, §29.001, and 34 Code of Federal Regulations, §300.511.

Source: The provisions of this §89.1170 adopted to be effective March 6, 2001, 26 TexReg 1837; amended to be effective November 28, 2012, 37 TexReg 9360; amended to be effective December 31, 2013, 38 TexReg 9552; amended to be effective December 2, 2015, 40 TexReg 8642; amended to be effective February 15, 2018, 43 TexReg 766.

§89.1175. Representation in Special Education Due Process Hearings.

(a) A party to a due process hearing may represent himself or herself or be represented by:

(1) an attorney who is licensed in the State of Texas; or

(2) an individual who is not an attorney licensed in the State of Texas but who has special knowledge or training with respect to problems of children with disabilities and who satisfies the qualifications of this section.

(b) A party who wishes to be represented by an individual who is not an attorney licensed in the State of Texas must file a written authorization with the hearing officer promptly after filing the request for a due process hearing or promptly after retaining the services of the non-attorney representative. The party must forward a copy of the written authorization to the opposing party at the same time that the written authorization is filed with the hearing officer.

(c) The written authorization must be on the form provided in this subsection.

Figure: 19 TAC §89.1175(c)

(d) The written authorization must include the non-attorney representative's name and contact information and a description of the non-attorney representative's:

(1) special knowledge or training with respect to problems of children with disabilities;

(2) knowledge of the rules and procedures that apply to due process hearings, including those in 34 Code of Federal Regulations, §§300.507-300.515 and 300.532, if applicable, and this division;

(3) knowledge of federal and state special education laws, regulations, and rules; and

(4) educational background.

(e) The written authorization must state the party's acknowledgment of the following:

(1) the non-attorney representative has been given full authority to act on the party's behalf with respect to the hearing;

(2) the actions or omissions by the non-attorney representative are binding on the party, as if the party had taken or omitted those actions directly;

(3) documents are deemed to be served on the party if served on the non-attorney representative;

(4) communications between the party and a non-attorney representative are not generally protected by the attorney-client privilege and may be subject to disclosure during the hearing proceeding;

(5) neither federal nor state special education laws provide for the recovery of fees for the services of a non-attorney representative; and

(6) it is the party's responsibility to notify the hearing officer and the opposing party of any change in the status of the authorization and that the provisions of the authorization will remain in effect until the party notifies the hearing officer and the opposing party of the party's revocation of the authorization.

(f) If the non-attorney representative receives monetary compensation in exchange for representing the party in the due process hearing, the written authorization must affirm the following:

(1) the non-attorney representative has agreed to abide by a voluntary code of ethics and professional conduct during the period of representation; and

(2) the non-attorney representative and the party have entered into a confidential, written representation agreement that includes a process for resolving any disputes that may arise between the non-attorney representative and the party.

(g) The written authorization must be signed and dated by the party.

(h) An individual is prohibited from being a party's representative under subsection (a)(2) of this section if the individual has prior employment experience with the school district and the school district raises an objection to the individual serving as a representative based on the individual's prior employment experience. No other objections to a party's representation by a non-attorney are permitted under this section.

(i) Upon receipt of a written authorization filed under this section, the hearing officer must promptly determine whether the non-attorney representative is qualified and meets the requirements to represent the party in the hearing and must notify the parties in writing of the determination. A hearing officer's determination is final and not subject to review or appeal.

(j) A non-attorney representative may not file pleadings or other documents on behalf of a party, present statements and arguments on behalf of a party, examine and cross-examine witnesses, offer and introduce evidence, object to the introduction of evidence and testimony, or engage in other activities in a representative capacity unless the hearing officer has reviewed a written authorization filed under this section and determined that the non-attorney representative is qualified to represent the party in the hearing.

(k) In accordance with the Texas Education Code, §38.022, a school district may require an attorney or a non-attorney representative who enters a school campus to display his or her driver's license or another form of government-issued identification. A school district may also verify whether the representative is a

registered sex offender and may apply a policy adopted by its board of trustees regarding the action to be taken when a visitor to a school campus is identified as a sex offender.

Statutory Authority: The provisions of this §89.1175 issued under Texas Education Code, §29.001 and §29.0162, and 34 Code of Federal Regulations, §300.512.

Source: The provisions of this §89.1175 adopted to be effective December 31, 2013, 38 TexReg 9552; amended to be effective March 1, 2017, 42 TexReg 760; amended to be effective February 15, 2018, 43 TexReg 766.

§89.1180. Prehearing Procedures.

(a) Promptly upon being assigned to a due process hearing, the hearing officer will forward to the parties a scheduling order which sets the time, date, and location of the hearing and contains the timelines for the following actions, as applicable:

(1) Response to Request for a Due Process Hearing (34 Code of Federal Regulations (CFR), §300.508(f));

(2) Resolution Meeting (34 CFR, §300.510(a));

(3) Contesting Sufficiency of the Request for a Hearing (34 CFR, §300.508(d));

(4) Resolution Period (34 CFR, §300.510(b));

(5) Five-Business Day Disclosure (34 CFR, §300.512(a)(3)); and

(6) the date by which the final decision of the hearing officer must be issued (34 CFR, §300.515 and §300.532(c)(2)).

(b) The hearing officer must schedule a prehearing conference to be held at a time reasonably convenient to the parties to the hearing. The prehearing conference must be held by telephone unless the hearing officer determines that circumstances require an in-person conference.

(c) The prehearing conference must be recorded and transcribed by a court reporter, who will promptly prepare a transcript of the prehearing conference for the hearing officer with copies to each of the parties.

(d) The purpose of the prehearing conference will be to consider any of the following:

(1) specifying issues as set forth in the request for a hearing;

(2) admitting certain assertions of fact or stipulations;

(3) establishing any limitations on the number of witnesses and the time allotted for presenting each party's case; and/or

(4) discussing other matters which may aid in simplifying the proceeding or disposing of matters in controversy, including settling matters in dispute.

(e) Promptly upon the conclusion of the prehearing conference, the hearing officer will issue and deliver to the parties a written prehearing order which confirms and/or identifies:

(1) the time, place, and date of the hearing;

(2) the issues to be adjudicated at the hearing;

(3) the relief being sought at the hearing;

(4) the deadline for disclosure of evidence and identification of witnesses, which must be at least five business days prior to the scheduled date of the hearing (hereinafter referred to as the "Disclosure Deadline");

(5) the date by which the final decision of the hearing officer must be issued; and

(6) other information determined to be relevant by the hearing officer.

(f) No pleadings, other than the request for a hearing, and the response to the request for a hearing, if applicable, are mandatory, unless ordered by the hearing officer. Any pleadings after the request for a hearing must be filed with the hearing officer. Copies of all pleadings must be sent to all parties of record in the hearing and to the hearing officer. If a party is represented by an attorney or a non-attorney determined

by the hearing officer to be qualified to represent the party, all copies must be sent to the attorney of record or non-attorney representative, as applicable. Facsimile copies may be substituted for copies sent by other means. An affirmative statement that a copy of the pleading has been sent to all parties and the hearing officer is sufficient to indicate compliance with this subsection.

(g) Discovery methods are limited to those specified in the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and may be further limited by order of the hearing officer. Upon a party's request to the hearing officer, the hearing officer may issue subpoenas and commissions to take depositions under the APA. Subpoenas and commissions to take depositions must be issued in the name of the Texas Education Agency.

(h) On or before the Disclosure Deadline (which must be at least five business days prior to a scheduled hearing), each party must disclose and provide to all other parties and the hearing officer copies of all evidence (including, without limitation, all evaluations completed by that date and recommendations based on those evaluations) that the party intends to use at the hearing. An index of the documents disclosed must be included with and accompany the documents. Each party must also include with the documents disclosed a list of all witnesses (including their names, addresses, phone numbers, and professions) that the party anticipates calling to testify at the hearing.

(i) A party may request a dismissal or nonsuit of a hearing to the same extent that a plaintiff may dismiss or nonsuit a case under the Texas Rules of Civil Procedure, Rule 162. However, if a party requests a dismissal or nonsuit of a hearing after the Disclosure Deadline has passed and, at any time within one year thereafter requests a subsequent hearing involving the same or substantially similar issues as those alleged in the original hearing, then, absent good cause or unless the parties agree otherwise, only evidence disclosed and witnesses identified by the Disclosure Deadline in the original hearing may be introduced at the subsequent hearing.

Statutory Authority: The provisions of this §89.1180 issued under Texas Education Code, §29.001, and 34 Code of Federal Regulations, §§300.508, 300.510, 300.512, 300.515, and 300.532.

Source: The provisions of this §89.1180 adopted to be effective March 6, 2001, 26 TexReg 1837; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective November 28, 2012, 37 TexReg 9360; amended to be effective December 31, 2013, 38 TexReg 9552; amended to be effective March 1, 2017, 42 TexReg 760.

§89.1183. Resolution Process.

(a) Within 15 calendar days of receiving notice of the parent's request for a due process hearing, the public education agency must convene a resolution meeting with the parent and the relevant members of the admission, review, and dismissal committee who have specific knowledge of the facts identified in the request. The resolution meeting:

(1) must include a representative of the public education agency who has decision-making authority on behalf of the public education agency; and

(2) may not include an attorney of the public education agency unless the parent is accompanied by an attorney.

(b) The purpose of the resolution meeting is for the parent of the child to discuss the hearing issues and the facts that form the basis of the request for a hearing so that the public education agency has the opportunity to resolve the dispute.

(c) The resolution meeting described in subsections (a) and (b) of this section need not be held if:

(1) the parent and the public education agency agree in writing to waive the meeting; or

(2) the parent and the public education agency agree to use the mediation process described in §89.1193 of this title (relating to Special Education Mediation).

(d) The parent and the public education agency determine the relevant members of the admission, review, and dismissal committee to attend the resolution meeting.

(e) The parties may enter into a confidentiality agreement as part of their resolution agreement. There is nothing in this division, however, that requires the participants in a resolution meeting to keep the

discussion confidential or make a confidentiality agreement a condition of a parent's participation in the resolution meeting.

(f) If the public education agency has not resolved the hearing issues to the satisfaction of the parent within 30 calendar days of the receipt of the request for a hearing, the hearing may occur.

(g) Except as provided in subsection (k) of this section, the timeline for issuing a final decision begins at the expiration of this 30-day resolution period.

(h) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding subsections (f) and (g) of this section, the failure of the parent filing a request for a hearing to participate in the resolution meeting delays the timelines for the resolution process and the hearing until the meeting is held.

(i) If the public education agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented in accordance with the procedures in 34 Code of Federal Regulations, §300.322(d)), the public education agency may at the conclusion of the 30-day resolution period, request that a hearing officer dismiss the parent's request for a hearing.

(j) If the public education agency fails to hold the resolution meeting within 15 calendar days of receiving the parent's request for a hearing or fails to participate in the resolution meeting, the parent may seek the intervention of the hearing officer to begin the hearing timeline.

(k) Notwithstanding subsections (f) and (g) of this section, the timeline for issuing a final decision starts the calendar day after one of the following events:

(1) both parties agree in writing to waive the resolution meeting;

(2) after either the mediation or resolution meeting starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible; or

(3) if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later the parent or public education agency withdraws from the mediation process.

(l) If a resolution to the dispute is reached at the resolution meeting, the parties must execute a legally binding agreement that is:

(1) signed by both the parent and a representative of the public education agency who has the authority to bind the public education agency; and

(2) enforceable in any state or federal court of competent jurisdiction.

(m) If the parties execute an agreement pursuant to subsection (l) of this section, a party may void the agreement within three business days of the agreement's execution.

Statutory Authority: The provisions of this §89.1183 issued under Texas Education Code, §29.001, and 34 Code of Federal Regulations, §300.510.

Source: The provisions of this §89.1183 adopted to be effective December 31, 2013, 38 TexReg 9552; amended to be effective March 1, 2017, 42 TexReg 760.

§89.1185. Hearing Procedures.

(a) The hearing officer must afford the parties an opportunity for hearing within the timelines set forth in 34 Code of Federal Regulations (CFR), §300.515 and §300.532, as applicable, unless the hearing officer, at the request of either party, grants an extension of time, except that the timelines for expedited hearings cannot be extended.

(b) Each hearing must be conducted at a time and place that are reasonably convenient to the parents and child involved.

(c) All persons in attendance must comport themselves with the same dignity, courtesy, and respect required by the district courts of the State of Texas. All argument must be made to the hearing officer alone.

(d) Except as modified or limited by the provisions of 34 CFR, §§300.507-300.514 or 300.532, or this division, the Texas Rules of Civil Procedure will govern the proceedings at the hearing and the Texas Rules of Evidence will govern evidentiary issues.

(e) Before a document may be offered or admitted into evidence, the document must be identified as an exhibit of the party offering the document. All pages within the exhibit must be numbered, and all personally identifiable information concerning any student who is not the subject of the hearing must be redacted from the exhibit.

(f) The hearing officer may set reasonable time limits for presenting evidence at the hearing.

(g) Upon request, the hearing officer, at his or her discretion, may permit testimony to be received by telephone.

(h) Granting of a motion to exclude witnesses from the hearing room will be at the hearing officer's discretion.

(i) Hearings conducted under this division must be closed to the public, unless the parent requests that the hearing be open.

(j) The hearing must be recorded and transcribed by a court reporter, who will promptly prepare and transmit a transcript of the evidence to the hearing officer with copies to each of the parties.

(k) Filing of post-hearing briefs will be permitted only upon order of the hearing officer.

(l) The hearing officer must issue a final decision, signed and dated, no later than 45 calendar days after the expiration of the 30-day resolution period under 34 CFR, §300.510(b), and §89.1183 of this title (relating to Resolution Process) or the adjusted time periods described in 34 CFR, §300.510(c), and §89.1183 of this title after a request for a due process hearing is received by the Texas Education Agency (TEA), unless the deadline for a final decision has been extended by the hearing officer as provided in §89.1186 of this title (relating to Extensions of Time). A final decision must be in writing and must include findings of fact and conclusions of law separately stated. Findings of fact must be based exclusively on the evidence presented at the hearing. The final decision must be mailed to each party by the hearing officer on the day that the decision is issued. The hearing officer, at his or her discretion, may render his or her decision following the conclusion of the hearing, to be followed by written findings of fact and written decision.

(m) At the request of either party, the hearing officer must include, in the final decision, specific findings of fact regarding the following issues:

(1) whether the parent or the public education agency unreasonably protracted the final resolution of the issues in controversy in the hearing; and

(2) if the parent was represented by an attorney, whether the parent's attorney provided the public education agency the appropriate information in the request for a hearing in accordance with 34 CFR, §300.508(b).

(n) The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the hearing in any state court of competent jurisdiction or in a district court of the United States, as provided in 34 CFR, §300.516.

(o) A public education agency must implement any decision of the hearing officer that is, at least in part, adverse to the public education agency within the timeframe prescribed by the hearing officer or, if there is no timeframe prescribed by the hearing officer, within ten school days after the date the decision was rendered. In accordance with 34 CFR, §300.518(d), a public education agency must implement a hearing officer's decision during the pendency of an appeal, except that the public education agency may withhold reimbursement for past expenses ordered by the hearing officer.

(p) In accordance with 34 CFR, §300.152(c)(3), a parent may file a complaint with the TEA alleging that a public education agency has failed to implement a hearing officer's decision.

Statutory Authority: The provisions of this §89.1185 issued under Texas Education Code, §29.001 and §29.0162, and 34 Code of Federal Regulations, §§300.512, 300.515, 300.516, and 300.532.

Source: The provisions of this §89.1185 adopted to be effective March 6, 2001, 26 TexReg 1837; amended to be effective December 30, 2001, 26 TexReg 10536; amended to be effective November 16, 2003, 28 TexReg 9830;

amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective November 28, 2012, 37 TexReg 9360; amended to be effective December 31, 2013, 38 TexReg 9552; amended to be effective March 1, 2017, 42 TexReg 760.

§89.1186. Extensions of Time.

(a) A hearing officer may grant extensions of time for good cause beyond the time period specified in §89.1185(l) of this title (relating to Hearing Procedures) at the request of either party. A hearing officer must not solicit extension requests, grant extensions on his or her own behalf, or unilaterally issue extensions for any reason. Any extension must be granted to a specific date, and the reason for the extension must be documented in a written order of the hearing officer and provided to each of the parties.

(b) A hearing officer may grant a request for an extension only after fully considering the cumulative impact of the following factors:

(1) whether the delay will positively contribute to, or adversely affect, the child's educational interest or well-being;

(2) the need of a party for additional time to prepare or present the party's position at the hearing;

(3) any adverse financial or other detrimental consequences likely to be suffered by a party in the event of delay; and

(4) whether there has already been a delay in the proceeding through the actions of one of the parties.

Statutory Authority: The provisions of this §89.1186 issued under Texas Education Code, §29.001, and 34 Code of Federal Regulations, §300.515.

Source: The provisions of this §89.1186 adopted to be effective December 31, 2013, 38 TexReg 9552; amended to be effective March 1, 2017, 42 TexReg 760.

§89.1191. Special Rule for Expedited Due Process Hearings.

A parent who disagrees with any decision regarding a child's placement under 34 Code of Federal Regulations (CFR), §300.530 and §300.531, or a manifestation determination under 34 CFR, §300.530(e), or a school district that believes that maintaining the current placement of a child is substantially likely to result in injury to the child or others, may appeal the decision by requesting an expedited due process hearing under 34 CFR, §300.532. An expedited due process hearing will be governed by the same procedural rules as are applicable to due process hearings generally, except that:

(1) the hearing must occur within 20 school days of the date the request for a due process hearing is filed;

(2) the hearing officer must make a decision within 10 school days after the hearing;

(3) unless the parents and the school district agree in writing to waive the resolution meeting required by 34 CFR, §300.532(c)(3)(i), or to use the mediation process described in 34 CFR, §300.506, the resolution meeting must occur within seven calendar days of the receipt of the request for a hearing;

(4) the hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the request for a hearing;

(5) the hearing officer must not grant any extensions of time or grant permission for the hearing to proceed under the timelines that apply to hearings involving non-disciplinary matters; and

(6) the provisions in 34 CFR, §300.508(d), do not apply.

Statutory Authority: The provisions of this §89.1191 issued under Texas Education Code, §29.001, and 34 Code of Federal Regulations, §300.532.

Source: The provisions of this §89.1191 adopted to be effective March 6, 2001, 26 TexReg 1837; amended to be effective November 11, 2007, 32 TexReg 8129; amended to be effective November 28, 2012, 37 TexReg 9360; amended to be effective December 31, 2013, 38 TexReg 9552; amended to be effective March 1, 2017, 42 TexReg 760.

§89.1192. Attorneys' Fees.

In an action or proceeding brought under this division, a court, in its discretion, may award reasonable attorneys' fees to the prevailing party under the circumstances described in 34 Code of Federal Regulations, §300.517.

Statutory Authority: The provisions of this §89.1192 issued under Texas Education Code, §29.001 and 34 Code of Federal Regulations, §300.517.

Source: The provisions of this §89.1192 adopted to be effective March 1, 2017, 42 TexReg 760.

§89.1193. Special Education Mediation.

(a) In accordance with 34 Code of Federal Regulations (CFR), §300.506, the Texas Education Agency (TEA) has established a mediation process to provide parents and public education agencies with an opportunity to resolve disputes involving any matter arising under Part B of the Individuals with Disabilities Education Act (IDEA) or 34 CFR, §300.1 et seq. Mediation is available to resolve these disputes at any time.

(b) The mediation procedures must ensure that the process is:

(1) voluntary on the part of the parties;

(2) not used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under Part B of the IDEA; and

(3) conducted by a qualified and impartial mediator who is trained in effective mediation techniques and who is knowledgeable in laws and regulations relating to the provision of special education and related services.

(c) A request for mediation must be in writing and must be filed with the TEA by electronic mail, mail, hand-delivery, or facsimile. The TEA has developed a form that may be used by parties requesting mediation. The form is available on request from the TEA and is also available on the TEA website.

(d) The TEA will maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(e) An individual who serves as a mediator:

(1) must not be an employee of the TEA or the public education agency that is involved in the education or care of the child who is the subject of the mediation process;

(2) must not have a personal or professional conflict of interest, including relationships or contracts with schools or parents outside of mediations assigned by the TEA; and

(3) is not an employee of the TEA solely because the individual is paid by the TEA to serve as a mediator.

(f) The TEA will select mediators on a random, rotational, or other impartial basis. Selecting mediators on an impartial basis includes permitting the parties involved in a dispute to agree on a mediator from the TEA's list of mediators. If the parties agree to a mediator, they must advise the TEA of the desired mediator. The TEA will provide the parties with written notice of the specific mediator assigned to conduct the mediation. The parties must not contact a mediator on the TEA's list of mediators until the TEA has provided the parties with the written notice of the mediator assignment.

(g) If a mediator is also a hearing officer under §89.1170 of this title (relating to Impartial Hearing Officer), that individual may not serve as a mediator if he or she is the hearing officer in a pending due process hearing involving the same student who is the subject of the mediation process or was the hearing officer in a previous due process hearing involving the student who is the subject of the mediation process.

(h) The TEA will bear the cost of the mediation process.

(i) A mediation session must be scheduled in a timely manner and held in a location that is convenient to the parties.

(j) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that:

(1) states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(2) is signed by both the parent and a representative of the public education agency who has the authority to bind the public education agency.

(k) A written, signed mediation agreement under subsection (j) of this section is enforceable in any state or federal court of competent jurisdiction.

(l) Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any state or federal court.

Statutory Authority: The provisions of this §89.1193 issued under Texas Education Code, §29.001, and 34 Code of Federal Regulations, §300.506.

Source: The provisions of this §89.1193 adopted to be effective December 31, 2013, 38 TexReg 9552; amended to be effective March 1, 2017, 42 TexReg 760; amended to be effective March 14, 2021, 46 TexReg 1466.

§89.1195. Special Education Complaint Resolution.

(a) In accordance with 34 Code of Federal Regulations (CFR), §300.151, the Texas Education Agency (TEA) has established a complaint resolution process that provides for the investigation and issuance of findings regarding alleged violations of Part B of the Individuals with Disabilities Education Act (IDEA) or a state special education statute or administrative rule.

(b) A complaint may be filed with the TEA by any individual or organization and must:

(1) be in writing;

(2) include the signature and contact information for the complainant;

(3) contain a statement that a public education agency has violated Part B of the IDEA; 34 CFR, §300.1 et seq.; or a state special education statute or administrative rule;

(4) include the facts upon which the complaint is based;

(5) if alleging violations with respect to a specific student, include:

(A) the name and address of the residence of the student;

(B) the name of the school the student is attending;

(C) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Act (42 United States Code, §11434a(2)), available contact information for the student and the name of the school the student is attending;

(D) a description of the nature of the problem of the student, including facts relating to the problem; and

(E) a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;

(6) allege a violation that occurred not more than one calendar year prior to the date the complaint is received; and

(7) be forwarded to the public education agency that is the subject of the complaint at the same time that the complaint is filed with the TEA.

(c) A complaint must be filed with the TEA by electronic mail, mail, hand-delivery, or facsimile. The TEA has developed a form that may be used by persons or organizations filing a complaint. The form is available on request from the TEA and is also available on the TEA website. The complaint timeline will commence on the business day that TEA receives the complaint. If a complaint is received on a day other than a business day, the complaint timeline will commence on the first business day after the day on which the TEA receives the complaint. The one-calendar-year statute of limitations for a complaint will be determined based on the day that the complaint timeline commences.

(d) If a complaint does not meet the requirements outlined in subsection (b) of this section, the TEA must notify the complainant of the deficiencies in the complaint.

(e) Upon receipt of a complaint that meets the requirements of this section, the TEA must initiate an investigation to determine whether the public education agency is in compliance with applicable law and regulations in accordance with the following procedures.

(1) The TEA must send written notification to the parties acknowledging receipt of a complaint.

(A) The notification must include:

(i) the alleged violations that will be investigated;

(ii) alternative procedures available to address allegations in the complaint that are outside of the scope of Part B of the IDEA; 34 CFR, §300.1, et seq.; or a state special education statute or administrative rule;

(iii) a statement that the public education agency may, at its discretion, investigate the alleged violations and propose a resolution of the complaint;

(iv) a statement that the parties have the opportunity to resolve the complaint through mediation in accordance with the procedures in §89.1193 of this title (relating to Special Education Mediation);

(v) a timeline for the public education agency to submit:

(I) documentation demonstrating that the complaint has been resolved; or

(II) a written response to the complaint and all documentation and information requested by the TEA;

(vi) a statement that the complainant may submit additional information about the allegations in the complaint, either orally or in writing within a timeline specified by the TEA, and may provide a copy of any additional information to the public education agency to assist the parties in resolving the dispute at the local level; and

(vii) a statement that the TEA may grant extensions of the timeline for a party to submit information under clause (v) or (vi) of this subparagraph at the request of either party.

(B) In accordance with 34 CFR, §300.504, upon receipt of the first special education complaint filed by a parent during a school year, TEA will provide an electronic copy of the Notice of Procedural Safeguards to the parent, and the public education agency against which the complaint is filed must provide the parent with a hard copy of the Notice of Procedural Safeguards unless that parent has elected, in accordance with 34 CFR, §300.505, to receive the required notice by electronic mail, if the public education agency makes that option available.

(C) The public education agency must provide the TEA with a written response to the complaint and all documentation and information requested by the TEA. The public education agency must forward its response to the parent who filed the complaint at the same time that the response is provided to the TEA. The public education agency may also provide the parent with a copy of the documentation and information requested by the TEA. If the complaint was filed by an individual other than the student's parent, the public education agency must forward a copy of the response to that individual only if written parental consent has been provided to the public education agency.

(2) If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the TEA must:

(A) set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and

(B) resolve any issue in the complaint that is not a part of the due process hearing.

(3) If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the TEA must inform the complainant that the due process hearing decision is binding.

(4) The TEA has 60 calendar days after a valid written complaint is received to carry out the investigation and to resolve the complaint. The TEA may extend the time limit beyond 60 calendar days if exceptional circumstances, as determined by the TEA, exist with respect to a particular complaint. The parties will be notified in writing by the TEA of the exceptional circumstances, if applicable, and the extended time limit. The time limit may also be extended if the parties agree to extend it in order to engage in mediation pursuant to §89.1193 of this title or other alternative means of dispute resolution. In accordance with the Texas Education Code, §29.010(e), the TEA must expedite a complaint alleging that a public education agency has refused to enroll a student eligible for special education and related services or that otherwise indicates a need for expedited resolution, as determined by the TEA.

(5) During the course of the investigation, the TEA must:

(A) conduct an investigation of the complaint that must include a complete review of all relevant documentation and that may include interviews with appropriate individuals and an independent on-site investigation, if necessary;

(B) consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards;

(C) make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable law, regulations, or standards and issue a written report of findings of fact and conclusions, including reasons for the decision, and any corrective actions that are required, including the time period within which each action must be taken;

(D) review any evidence that the public education agency has corrected noncompliance on its own initiative;

(E) ensure that the TEA's final decision is effectively implemented, if needed, through technical assistance activities, negotiations, and corrective actions to achieve compliance; and

(F) in the case of a complaint filed by an individual other than the student's parent, provide a copy of the written report only if written parental consent has been provided to the TEA.

(6) In resolving a complaint in which a failure to provide appropriate services is found, the TEA must address:

(A) the failure to provide appropriate services, including corrective action appropriate to address the needs of the student, including compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the student; and

(B) appropriate future provision of services for all students with disabilities.

(7) In accordance with 34 CFR, §300.600(e), the public education agency must complete all required corrective actions as soon as possible, and in no case later than one year after the TEA's identification of the noncompliance. A public education agency's failure to correct the identified noncompliance within the one-year timeline will result in an additional finding of noncompliance under 34 CFR, §300.600(e), and may result in sanctions against the public education agency in accordance with §89.1076 of this title (relating to Interventions and Sanctions).

(f) If a party to a complaint believes that the TEA's written report includes an error that is material to the determination in the report, the party may submit a signed, written request for reconsideration to the TEA by electronic mail, mail, hand-delivery, or facsimile within 15 calendar days of the date of the report. The party's reconsideration request must identify the asserted error and include any documentation to support the claim. The party filing a reconsideration request must forward a copy of the request to the other party at the same time that the request is filed with the TEA. The other party may respond to the reconsideration request within five calendar days of the date on which the TEA received the request. The TEA will

consider the reconsideration request and provide a written response to the parties within 45 calendar days of receipt of the request. The filing of a reconsideration request must not delay a public education agency's implementation of any corrective actions required by the TEA.

(g) In accordance with 34 CFR, §300.151, the TEA's complaint resolution procedures must be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

(h) In exercising its general supervisory authority under 34 CFR, §300.149 and §300.600, the TEA may resolve any other credibly alleged violation of IDEA or a state special education statute or administrative rule that it receives even if a sufficient complaint is not filed with the TEA in accordance with 34 CFR, §§300.151-300.153, and this section. In doing so, the TEA may take one or more of the following actions:

(1) requesting a response and supporting documentation from a public education agency against which a credible violation of IDEA or a state special education statute or administrative rule has been alleged;

(2) conducting a desk or on-site investigation of a public education agency;

(3) making a determination regarding the allegation(s); and

(4) requiring a public education agency to implement corrective actions to address any identified noncompliance.

(i) For the purposes of subsection (h) of this section, anonymous complaints, complaints that are received outside the one-calendar-year statute of limitations for a special education complaint, and complaints that do not include sufficient information or detail for the TEA to determine that an alleged violation of special education requirements may have occurred will not be considered to be credible complaints.

(j) If the public education agency against which a complaint is received under subsection (h) of this section believes that TEA made an incorrect determination of noncompliance, the public education agency may submit a written request for reconsideration to the TEA within 15 calendar days of the date that TEA issued its findings. The reconsideration request must identify the asserted error and include any documentation to support the claim. The TEA will consider the reconsideration request and provide a written response to the public education agency within 45 calendar days of receipt of the request. The filing of a reconsideration request must not delay a public education agency's implementation of any corrective actions required by the TEA.

Statutory Authority: The provisions of this §89.1195 issued under Texas Education Code, §29.001 and §29.010, and 34 Code of Federal Regulations, §§300.149, 300.151, 300.152, 300.153, 300.504 and 300.600.

Source: The provisions of this §89.1195 adopted to be effective December 31, 2013, 38 TexReg 9552; amended to be effective January 1, 2015, 39 TexReg 10446; amended to be effective March 22, 2017, 42 TexReg 1247; amended to be effective March 14, 2021, 46 TexReg 1466; amended to be effective January 18, 2023, 48 TexReg 133.

§89.1196. Individualized Education Program Facilitation.

(a) For the purpose of this section and Texas Education Code, §29.019, individualized education program (IEP) facilitation refers to a method of alternative dispute resolution that involves the use of a trained facilitator to assist an admission, review, and dismissal (ARD) committee in developing an IEP for a student with a disability. The facilitator uses facilitation techniques to help the committee members communicate and collaborate effectively. While public education agencies are not required to offer IEP facilitation as an alternative dispute resolution method, the Texas Education Agency (TEA) encourages the use of IEP facilitation as described in this section.

(b) A public education agency is not prohibited from incorporating elements of IEP facilitation into ARD committee meetings that are conducted without the assistance of a facilitator as described in this section. For example, a public education agency may provide training on communication skills, conflict management, or meeting effectiveness to individuals who participate in ARD committee meetings to enhance collaboration and efficiency in those meetings.

(c) A public education agency that chooses to offer IEP facilitation under this section may determine whether to use independent contractors, employees, or other qualified individuals as facilitators. At a minimum, an individual who serves as a facilitator must:

(1) have demonstrated knowledge of federal and state requirements relating to the provision of special education and related services to students with disabilities;

(2) have demonstrated knowledge of and experience with the ARD committee meeting process;

(3) have completed 18 hours of training in IEP facilitation, consensus building, and/or conflict resolution; and

(4) complete continuing education as determined by the public education agency.

(d) A public education agency that chooses to offer IEP facilitation under this section must ensure that:

(1) participation is voluntary on the part of the parties;

(2) the facilitation is provided at no cost to parents; and

(3) the process is not used to deny or delay the right to pursue a special education complaint, mediation, or a due process hearing in accordance with Part B of the Individuals with Disabilities Education Act (IDEA) and this division.

(e) A public education agency that chooses to offer IEP facilitation under this section must develop written policies and procedures that include:

(1) the procedures for requesting facilitation;

(2) facilitator qualifications, including whether facilitators are independent contractors, employees, or other qualified individuals;

(3) the process for assigning a facilitator;

(4) the continuing education requirements for facilitators; and

(5) a method for evaluating the effectiveness of the facilitation services and the individual facilitators.

(f) A public education agency that chooses to offer IEP facilitation under this section must provide parents with information about the process, including a description of the procedures for requesting IEP facilitation and information related to facilitator qualifications. This information must be included when a copy of the procedural safeguards notice under 34 Code of Federal Regulations (CFR), §300.504 is provided to parents, although this information may be provided as a separate document and may be provided in a written or electronic format.

(g) A facilitator under this section must not be a member of the student's ARD committee, must not have any decision-making authority over the committee, and must remain impartial to the topics under discussion. The facilitator must assist with the overall organization and conduct of the ARD committee meeting by:

(1) assisting the committee in establishing an agenda and setting the time allotted for the meeting;

(2) assisting the committee in establishing a set of guidelines for the meeting;

(3) guiding the discussion and keeping the focus on developing a mutually agreed upon IEP for the student;

(4) ensuring that each committee member has an opportunity to participate;

(5) helping to resolve disagreements that arise; and

(6) helping to keep the ARD committee on task so that the meeting purposes can be accomplished within the time allotted for the meeting.

(h) Promptly after being assigned to facilitate an ARD committee meeting, or within a timeline established under the public education agency's procedures, the facilitator must contact the parents and public education agency representative to clarify the issues, gather necessary information, and explain the IEP facilitation process.

(i) A public education agency that chooses to offer IEP facilitation under this section must ensure that facilitators protect the confidentiality of personally identifiable information about the student and comply with the requirements in the Family Educational Rights and Privacy Act regulations, 34 CFR, Part 99, relating to the disclosure and redisclosure of personally identifiable information from a student's education record.

(j) The TEA will develop information regarding IEP facilitation as an alternative dispute resolution method, and such information will be available upon request from the TEA and on the TEA website.

Statutory Authority: The provisions of this §89.1196 issued under Texas Education Code, §29.001 and §29.019.

Source: The provisions of this §89.1196 adopted to be effective January 1, 2015, 39 TexReg 10446.

§89.1197. State Individualized Education Program Facilitation.

(a) In accordance with the Texas Education Code, §29.020, the Texas Education Agency (TEA) will establish a program that provides independent individualized education program (IEP) facilitators beginning with the 2014-2015 school year.

(b) For the purpose of this section, IEP facilitation has the same general meaning as described in §89.1196(a) of this title (relating to Individualized Education Program Facilitation), except that state IEP facilitation is used when the admission, review, and dismissal (ARD) committee is in dispute about decisions relating to the provision of a free and appropriate public education to a student with a disability and the facilitator is an independent facilitator provided by the TEA.

(c) A request for IEP facilitation under this section must be filed by completing a form developed by the TEA that is available upon request from the TEA and on the TEA website. The form must be filed with the TEA by one of the parties by electronic mail, mail, hand-delivery, or facsimile.

(d) IEP facilitation under this section must be voluntary on the part of the parties and provided at no cost to the parties.

(e) In order for the TEA to provide an independent facilitator, the following conditions must be met.

(1) The required form must be completed and signed by both parties.

(2) The dispute must relate to an ARD committee meeting in which mutual agreement about one or more of the required elements of the IEP was not reached and the parties have agreed to recess and reconvene the meeting in accordance with §89.1050(g) of this title (relating to The Admission, Review, and Dismissal Committee).

(3) The request for IEP facilitation must have been filed within 10 calendar days of the ARD committee meeting that ended in disagreement, and a facilitator must be available on the date set for reconvening the meeting.

(4) The dispute must not relate to a manifestation determination or determination of interim alternative educational setting under 34 Code of Federal Regulations (CFR), §300.530 or §300.531.

(5) The same parties must not be concurrently involved in special education mediation under §89.1193 of this title (relating to Special Education Mediation).

(6) The issues in dispute must not be the subject of a special education complaint under §89.1195 of this title (relating to Special Education Complaint Resolution) or a special education due process hearing under §89.1151 of this title (relating to Special Education Due Process Hearings) and §89.1165 of this title (relating to Request for Special Education Due Process Hearing).

(7) The same parties must not have participated in IEP facilitation concerning the same student under this section within the same school year of the filing of the current request for IEP facilitation.

(f) Within five business days of receipt of a request for an IEP facilitation under this section, the TEA will determine whether the conditions in subsections (c)-(e) of this section have been met and will notify the parties of its determination and the assignment of the independent facilitator, if applicable.

(g) Notwithstanding subsections (b)-(e) of this section, if a special education due process hearing or complaint decision requires a public education agency to provide an independent facilitator to assist with an ARD committee meeting, the public education agency may request that the TEA assign an independent facilitator. Within five business days of receipt of a written request for IEP facilitation under this subsection, the TEA will notify the parties of its decision to assign or not assign an independent facilitator. If TEA declines the request to assign an independent facilitator, the public education agency must provide an independent facilitator at its own expense.

(h) The TEA's decision not to provide an independent facilitator is final and not subject to review or appeal.

(i) The independent facilitator assignment may be made based on a combination of factors, including, but not limited to, geographic location and availability. Once assigned, the independent facilitator must promptly contact the parties to clarify the issues, gather necessary information, and explain the IEP facilitation process.

(j) The TEA will use a competitive solicitation method to seek independent facilitation services, and the contracts with independent facilitators will be developed and managed in accordance with the TEA's contracting practices and procedures.

(k) At a minimum, an individual who serves as an independent facilitator under this section:

(1) must have demonstrated knowledge of federal and state requirements relating to the provision of special education and related services to students with disabilities;

(2) must have demonstrated knowledge of and experience with the ARD committee meeting process;

(3) must have completed 18 hours or more of training in IEP facilitation, consensus building, and/or conflict resolution as specified in the TEA's competitive solicitation;

(4) must complete continuing education as determined by the TEA;

(5) may not be an employee of the TEA or the public education agency that the student attends; and

(6) may not have a personal or professional interest that conflicts with his or her impartiality.

(l) An individual is not an employee of the TEA solely because the individual is paid by the TEA to serve as an independent facilitator.

(m) An independent facilitator must not be a member of the student's ARD committee, must not have any decision-making authority, and must remain impartial to the topics under discussion. The independent facilitator must assist with the overall organization and conduct of the ARD committee meeting by:

(1) assisting the committee in establishing an agenda and setting the time allotted for the meeting;

(2) assisting the committee in establishing a set of guidelines for the meeting;

(3) guiding the discussion and keeping the focus on developing a mutually agreed upon IEP for the student;

(4) ensuring that each committee member has an opportunity to participate;

(5) helping to resolve disagreements that arise; and

(6) helping to keep the ARD committee on task so that the meeting purposes can be accomplished within the time allotted for the meeting.

(n) An independent facilitator must protect the confidentiality of personally identifiable information about the student and comply with the requirements in the Family Educational Rights and Privacy Act regulations, 34 CFR, Part 99, relating to the disclosure and redisclosure of personally identifiable information from a student's education record.

(o) The TEA will develop surveys to evaluate the IEP facilitation program and the independent facilitators and will request that parties who participate in the program complete the surveys.

Statutory Authority: The provisions of this §89.1197 issued under Texas Education Code, §29.001 and §29.020.

Source: The provisions of this §89.1197 adopted to be effective January 1, 2015, 39 TexReg 10446; amended to be effective March 14, 2021, 46 TexReg 1466.