ATTACHMENT II
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Chapter 89. Adaptations for Special Populations

Subchapter A. Gifted/Talented Education

Statutory Authority: The provisions of this Subchapter A issued under the Texas Education Code, §29.122 and §42.156(b), unless otherwise noted.

§89.1. Student Assessment.

School districts shall develop written policies on student identification that are approved by the local board of trustees and disseminated to parents. The policies must:

(1) include provisions for ongoing screening and selection of students who perform or show potential for performing at remarkably high levels of accomplishment in the areas defined in the Texas Education Code, §29.121;

(2) include assessment measures collected from multiple sources according to each area defined in the Texas State Plan for the Education of Gifted/Talented Students;

(3) include data and procedures designed to ensure that students from all populations in the district have access to assessment and, if identified, services for the gifted/talented program;

(4) provide for final selection of students to be made by a committee of at least three local district educators who have received training in the nature and needs of gifted students; and

(5) include provisions regarding furloughs, reassessment, exiting of students from program services, transfer students, and appeals of district decisions regarding program placement.

Source: The provisions of this §89.1 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.2. Professional Development.

School districts shall ensure that:

(1) prior to assignment in the program, teachers who provide instruction and services that are a part of the program for gifted students have a minimum of 30 hours of staff development that includes nature and needs of gifted/talented students, assessing student needs, and curriculum and instruction for gifted students;

(2) teachers without training required in paragraph (1) of this section who provide instruction and services that are part of the gifted/talented program must complete the 30-hour training requirement within one semester;

(3) teachers who provide instruction and services that are a part of the program for gifted students receive a minimum of six hours annually of professional development in gifted education; and

(4) administrators and counselors who have authority for program decisions have a minimum of six hours of professional development that includes nature and needs of gifted/talented students and program options.

Source: The provisions of this §89.2 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective February 13, 2000, 25 TexReg 776.

§89.3. Student Services.

School districts shall provide an array of learning opportunities for gifted/talented students in kindergarten through Grade 12 and shall inform parents of the opportunities. Options must include:

(1) instructional and organizational patterns that enable identified students to work together as a group, to work with other students, and to work independently;

(2) a continuum of learning experiences that leads to the development of advanced-level products and performances;

(3) in-school and, when possible, out-of-school options relevant to the student's area of strength that are available during the entire school year; and

(4) opportunities to accelerate in areas of strength.

Source: The provisions of this §89.3 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.4. Fiscal Responsibility.

School districts shall ensure that: no more than 15% of state funds allocated for gifted/talented education are spent on indirect costs.

Source: The provisions of this §89.4 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.5. Program Accountability.

School districts shall ensure that student assessment and services for gifted/talented students comply with accountability standards defined in the Texas State Plan for the Education of the Gifted/Talented.

Source: The provisions of this §89.5 adopted to be effective September 1, 1996, 21 TexReg 5690.

Subchapter B. Adult Basic and Secondary Education

Statutory Authority: The provisions of this Subchapter B issued under Texas Education Code, §7.102(c)(16) and §29.253, unless otherwise noted.

§89.21. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adult education--Basic and secondary instruction and services for adults.

(A) Adult basic education--Instruction in reading, writing, English and solving quantitative problems, including functional context, designed for adults who: have minimal competence in reading, writing, and solving quantitative problems; are not sufficiently competent to speak, read, or write the English language; or are not sufficiently competent to meet the requirements of adult life in the United States, including employment commensurate with the adult's real ability.

(B) Adult secondary education--Comprehensive secondary instruction below the college credit level in reading, writing and literature, mathematics, science, and social studies, including functional context, and instruction for adults who do not have a high school diploma or its equivalent.

(2) Contact time--

(A) The cumulative sum of minutes during which an eligible adult student receives instructional, counseling, and/or assessment services by a staff member supported by federal and state adult education funds as documented by local attendance and reporting records.

(B) Student contact time generated by volunteers may be accrued by the adult education program when volunteer services are verifiable by attendance and reporting records and volunteers meet requirements under §89.25 of this title (relating to Qualifications and Training of Staff).

(3) Student contact hour--60 minutes.

(4) Cooperative/consortium adult education program--A community or area partnership of educational, work force development, human service entities, and other agencies that agree to collaborate for the provision of adult education and literacy services.

(5) Fiscal agent--The local entity that serves as the contracting agent for an adult education program.

(6) Eligible grant recipient--Eligible grant recipients for adult education programs are those entities specified in statutes.

Source: The provisions of this §89.21 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective September 1, 1999, 24 TexReg 386; amended to be effective December 25, 2006, 31 TexReg 10297.

§89.22. Use of Funds.

Adult education and literacy funds are to be used for programs of adult education and literacy for out-of-school persons who are beyond compulsory school attendance age and who function at less than a secondary school completion level or who lack a secondary school credential.

Source: The provisions of this §89.22 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.23. Essential Program Components.

The following essential program components shall be provided:

(1) adult basic education;

(2) programs for adults of limited English proficiency;

(3) adult secondary education, including programs leading to the achievement of a high school equivalency certificate and/or a high school diploma;

(4) instructional services to improve student proficiencies necessary to function effectively in adult life, including accessing further education, employment-related training, or employment; and

(5) assessment and guidance services related to paragraphs (1)-(4) of this section.

Source: The provisions of this §89.23 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.24. Diploma Requirements.

The standards for the awarding of diplomas to adults shall be those established under Chapter 74 of this title (relating to Curriculum Requirements) with the following exceptions.

(1) There shall be no limit to the number of secondary credits adults may earn by demonstration of competence.

(2) Adults may earn the required physical education credits by one or more of the following:

(A) satisfactory completion of approved secondary physical education courses; or

(B) substitution of state-approved secondary elective courses.

(3) Adults must meet the requirements for successful performance on a secondary level test designated by the commissioner of education.

Source: The provisions of this §89.24 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective September 1, 1999, 24 TexReg 386.

§89.25. Qualifications and Training of Staff.

The requirements of this section shall apply to all adult education staff hired after September 1, 1996, excluding clerical and janitorial staff.

(1) All staff shall receive at least 12 clock hours of professional development annually.

(2) All staff new to adult education shall receive six clock hours of preservice professional development before they begin work in an adult education program.

(3) Aides shall have at least a high school diploma or high school equivalency certificate.

(4) The following apply to directors, teachers, counselors, and supervisors.

(A) Persons must possess at least a bachelor's degree.

(B) Persons without valid Texas teacher certification must attend 12 clock hours of inservice professional development annually in addition to that specified in paragraph (1) of this section until they have completed either six clock hours of adult education college credit or attained two years of adult education experience.

(5) The requirements for inservice professional development may be reduced by local programs in individual cases where exceptional circumstances prevent employees from completing the required hours of inservice professional development. Documentation shall be kept justifying such circumstances. Requests for exemption from staff qualification requirements in individual cases may be submitted to the Texas Education Agency (TEA) for approval in the application for funding and must include justification and proposed qualifications.

(6) Records of staff qualifications and professional development shall be maintained by each fiscal agent and must be available for monitoring.

(7) The requirements in paragraphs (1)-(5) of this section also apply to volunteers who generate student contact time, as defined under §89.21 of this title (relating to Definitions), which is accrued by the adult education program and reported to TEA for funding purposes.

Source: The provisions of this §89.25 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.26. Service Requirements for Staff.

Teachers and aides shall be assigned to instruction, counseling, and/or assessment for a minimum of 75% of the hours for which they are employed.

Source: The provisions of this §89.26 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.27. Program Delivery System.

(a) There shall be a statewide system of adult education cooperatives/consortia for the coordinated provision of adult education services. To the extent possible, service delivery areas shall be large enough to support a program meeting the requirements of §89.23 of this title (relating to Essential Program Components) and to ensure efficient and effective delivery of services.

(b) Eligible grant recipients may apply directly to the Texas Education Agency (TEA) for adult education and literacy funding. Eligible grant recipients are encouraged to maximize the fiscal resources available for service to undereducated adults and avoid unproductive duplication of services and excessive administrative costs by forming consortia or cooperatives and using fiscal agents for the delivery of services.

(c) Grant applicants who will serve as a fiscal agent for a cooperative/consortium must consult with other adult education and literacy providers in the cooperative/consortium in developing applications for funding to be submitted to TEA.

(d) Each fiscal agent shall be responsible for:

(1) the overall management of the cooperative/consortium, including technical assistance to consortium members, on-site visits, staff qualifications and professional development, and program implementation in accordance with the requirements of this subchapter;

(2) the employment of an administrator for the cooperative/consortium;

(3) development of written agreements with consortium members for the operation of the adult education program; and

(4) expenditures of funds for the conduct of the project and making and filing composite reports for the consortium.

(e) Nonconsortium applicants must also provide evidence of coordination of existing adult education and literacy services in the area proposed to be served and maintain an advisory committee.

Source: The provisions of this §89.27 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.28. Advisory Committee.

At least one collaborative advisory committee shall be formed in each funded adult education program. That committee shall be composed of a broad spectrum of community representatives, including work force development representatives, to review the activities of, and make recommendations to, the fiscal agent in planning, developing, and evaluating the adult education program. The fiscal agent shall be responsible for convening the collaborative advisory committee at least twice each year.

Source: The provisions of this §89.28 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.29. Allocation of Funds.

Annually, after federal adult education and literacy funds have been set aside for state administration, special projects and staff development, state and federal adult education fund allocations shall be developed for each county and each school district geographic area. Allocations shall be computed as follows.

(1) Twenty-five percent of the funds available shall be allocated based on the best available estimates of the number of eligible adults in each county and school district geographic area within each county.

(2) Seventy-five percent of the funds available shall be allocated based on student contact hours reported by each school district geographic area and for the most recent complete fiscal year reporting period.

(3) A school district geographic area's student contact hour annual allocation shall not be reduced by more than 10% below the preceding fiscal year's contact hour allocation provided that:

(A) sufficient funds are available; and

(B) the school district geographic area's contact hour performance used in calculating the allocation was not less than that of the preceding fiscal year.

(4) If public funds, other than state and federal adult education funds, are used in the adult education instructional program, the program may claim only the proportionate share of the student contact time based on the adult education program's expenditures for the instructional program.

Source: The provisions of this §89.29 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective December 25, 2006, 31 TexReg 10297.

§89.30. Tuition and Fees.

(a) No student tuition or fees shall be charged for adult basic education as a condition for membership and participation in a class.

(b) Tuition and fees for adult secondary education may be charged and be established by local fiscal agent board policy. Funds generated by such tuition and fees shall be used for the adult education instructional program.

Source: The provisions of this §89.30 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective December 25, 2006, 31 TexReg 10297.

§89.31. Allowable and Nonallowable Expenditures.

Supervisory and administrative costs shall not exceed 25% of the total budget. These costs may include supervisory payroll costs, rental of administrative space, indirect costs, and clerical costs.

Source: The provisions of this §89.31 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.32. Staff Development and Special Projects.

Priorities for expenditures of federal funds as required by the Workforce Investment Act, §223, shall be presented annually to the State Board of Education.

Source: The provisions of this §89.32 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective December 25, 2006, 31 TexReg 10297.

§89.33. Evaluation of Programs.

The Texas Education Agency shall evaluate adult education programs based on the indicators of program quality for adult education.

Source: The provisions of this §89.33 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective December 25, 2006, 31 TexReg 10297.

Subchapter C. General Educational Development

Statutory Authority: The provisions of this Subchapter C issued under the Texas Education Code, §7.111, unless otherwise noted.

§89.41. Policy.

The Texas Education Agency (TEA) shall be the only agency in Texas authorized to issue a certificate of high school equivalency on the basis of the General Educational Development (GED) Tests. Tests shall be administered by authorized contracted testing centers under applicable state law and rules of the American Council on Education and the State Board of Education (SBOE).

Source: The provisions of this §89.41 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.42. Official Testing Centers.

(a) When authorized by the Texas Education Agency (TEA), official testing centers shall be established by annual contract with an accredited school district, institution of higher learning, or education service center (ESC). The testing center must be located at a high school in an accredited district, an accredited institution of higher learning, or ESC. The chief administrative officer of a school, institution of higher learning, or ESC desiring to provide the General Educational Development (GED) testing service to residents in the community must request authorization to do so from TEA. If the need for a testing center in the location exists, the appropriate agency official, in writing, shall inform the American Council on Education that the establishment of an official testing center is authorized at that particular institution. The center shall be sent an annual contract, together with order forms and other material, relating to the operation of the testing center. The contract forms must be signed by the chief administrative officer of the school, institution of higher learning, or ESC, and the chief examiner.

(b) The chief administrative officer of the school, institution of higher learning, or ESC at which an official testing center is established must agree to provide appropriate storage for restricted test materials and to provide a suitable place for administering the test. Each center is responsible for selecting and ordering test materials.

(c) The administrative officer of a school district or ESC must designate a certified counselor, and the administrative officer of an institution of higher learning must designate a professional person with a master's degree with a background in teaching, training, testing, or counseling, to serve as chief examiner. The person designated as chief examiner shall not be involved in preparing persons for the examinations. The chief administrative officer must obtain prior authorization from TEA to change the chief examiner or the location of a testing center. The person designated as chief examiner must attend annual training conducted by TEA.

(d) A testing center may transport restricted test material to correctional facilities, health facilities, or schools if authorization to do so has been obtained. The chief administrative officer of an institution housing an official testing center and the administrator of the correctional facility, health facility, or school must request authorization to provide the testing services from TEA. Only the exact number of tests plus one needed at a test session may be transported to the addendum site. Testing services at correctional or health facilities shall be limited to inmates or patients of the facility, and the tests must be administered by an employee of the school district, institution of higher learning, or ESC housing the test center. To maintain the integrity of the test, a complete inventory of all secure testing materials shall be conducted:

(1) before leaving the official GED testing center;

(2) upon arrival at the addendum site;

(3) immediately before and after the test administration;

(4) before departure from the addendum site; and

(5) upon return to the official GED testing center.

(e) The authorization to function as an official testing center may be withdrawn by TEA when a center has failed to maintain the integrity of the testing program. The TEA may suspend testing at a center if restricted test material is reported missing or if conditions reported by the TEA site visit indicate that the testing center is in violation of State Board of Education (SBOE) rules or requirements of the American Council on Education.

(f) An official testing center may charge a fee for test administration. The amount of the fee shall be determined by the administration or board of the school district, institution of higher learning, or ESC.

(g) The administration or board of an institution housing an official testing center shall have a written policy concerning the operation of the center, a written emergency plan, and a testing schedule. Each official testing center must provide the following assurances to the GED Testing Service:

(1) appropriate resources;

(2) suitable physical facilities;

(3) adequate staffing;

(4) full testing support services;

(5) cooperation with the GEDTS;

(6) financial management; and

(7) test security.

Source: The provisions of this §89.42 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective October 15, 2006, 31 TexReg 8361.

§89.43. Eligibility for a Texas Certificate of High School Equivalency.

(a) An applicant for a certificate of high school equivalency shall meet the following requirements.

(1) Residence. The applicant must be a resident of Texas or a member of the United States armed forces stationed at a Texas installation.

(2) Age.

(A) The applicant must be 18 years old.

(B) An applicant who is 17 years of age is eligible with parental or guardian consent. An applicant who is 17 years of age must present written permission signed by the applicant's parent or guardian. An applicant who is 17 years of age and married, who has entered military service, who has been declared an adult by the court, or who has otherwise legally severed the child/parent relationship is not required to present parent or guardian permission to be tested.

(C) An applicant who is at least 16 years of age may test if recommended by a public agency having supervision or custody under a court order. Recommendations must include the applicant's name and date of birth and must be signed by an official of the public agency having supervision or custody of the person under a court order. An applicant who is at least 16 years old may also test if:

(i) required to take the examination under a justice or municipal court order issued under the Code of Criminal Procedure, Article 45.054(a)(1)(C) (formerly codified as Family Code, §54.021(d)(1)(B));

(ii) enrolled in a Job Corps training program under the Workforce Investment Act of 1998 (29 United States Code, §§2801 et seq.) and its subsequent amendments; or

(iii) enrolled in the adjutant general's department's Seaborne ChalleNGe Corps.

(3) Educational status. The applicant must not have received a high school diploma from an accredited high school in the United States. The applicant must not be enrolled in school, unless the applicant is enrolled in a High School Equivalency Program (HSEP) approved by the Texas Education Agency (TEA). A student who is 17 years of age is eligible to test if the student is enrolled in an HSEP approved by the TEA. The student must comply with the provisions of the HSEP.

(4) Minimum test scores. An applicant must achieve the appropriate minimum standard scores in effect at the time the applicant tested as established by the American Council on Education's General Educational Development Testing Service.

(b) Test centers shall verify that any person being tested meets the eligibility requirements in this section.

Source: The provisions of this §89.43 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective September 1, 1999, 24 TexReg 386; amended to be effective April 18, 2002, 27 TexReg 3061; amended to be effective October 15, 2006, 31 TexReg 8361.

§89.44. Identification.

Test centers shall require each examinee to present a driver's license or Texas Department of Public Safety (DPS) identification card, or a government issued identification card (both national and foreign), provided that the identification includes date of birth, photograph, address, and signature. The examinee must also meet the age, residency, and other requirements of this chapter.

Source: The provisions of this §89.44 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective April 18, 2002, 27 TexReg 3061.

§89.45. Retesting.

An examinee who fails to achieve a minimum passing score on one or more of the tests may retest on the tests he or she failed, except for instances in which the American Council on Education establishes that scores may not be combined across a General Educational Development test series, in which case the examinee must successfully complete the full battery of tests in a series. A person desiring to retest must wait six months to do so unless he or she presents a letter from an adult preparation program or a certified teacher verifying that the individual is prepared to retest. Each retest must be on a different form of the test.

Source: The provisions of this §89.45 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective April 18, 2002, 27 TexReg 3061.

§89.46. Examinees with Disabilities.

(a) A physically disabled person who is unable to mark an answer sheet may be assisted by the chief examiner or proctor. The examinee must read the questions without assistance and indicate the answer for the proctor to mark.

(b) A severely handicapped or ill person who cannot travel to the test center may be administered the tests at home. Prior approval to transport the tests shall be requested of the Texas Education Agency (TEA) by the chief examiner.

(c) An applicant who is unable to take the printed form of the test may be administered a taped version of the test upon written authorization of TEA. A request by the chief examiner must be accompanied by certification by a physician that verifies a medical diagnosis of the disability that renders the potential examinee unable to take the printed form of the test.

(d) An applicant who is visually handicapped may take the test in a Braille, large print, or taped version. Versions of the test in these forms are available from the General Educational Development Testing Service.

Source: The provisions of this §89.46 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective April 18, 2002, 27 TexReg 3061.

§89.47. Issuance of the Certificate.

(a) Test scores shall be accepted as official only when reported directly by official testing centers, the Defense Activity for Nontraditional Education Support, directors of Veterans Administration hospitals, and, in special cases, by the General Educational Development Testing Service (GEDTS).

(b) Following review for eligibility and approval, certificates will be issued directly to clients. A nonrefundable fee of $15 will be assessed for issuance of a certificate and a copy of test scores. A permanent file shall be maintained for all certificates issued.

(c) Duplicate certificates will be issued upon request from the client. The client is required to pay a nonrefundable fee of $5.00 for each request for a duplicate certificate.

(d) The certificate of high school equivalency shall indicate the version of the test taken by the applicant: audiotape, large print, Braille, English, French, or Spanish.

(e) The state General Educational Development (GED) administrator may disapprove issuance of a certificate or may cancel a certificate under the following conditions:

(1) an applicant does not meet eligibility requirements under §89.43 of this title (relating to Eligibility for a Texas Certificate of High School Equivalency);

(2) the applicant in any way violates security of the restricted test material;

(3) the applicant presents fraudulent identification or is not who he or she purports to be;

(4) the applicant uses another person's certificate or test scores in an attempt to defraud; or

(5) the applicant willingly allows another person to use his or her certificate or test scores in an attempt to defraud.

(f) In the case of nonissuance or cancellation of a certificate, the applicant shall be notified in writing by the GED administrator that the certificate will not be issued or may be canceled.

(g) An applicant who has been notified that his or her certificate will not be issued or may be canceled may appeal to the state GED administrator within 30 days of receiving written notification.

(h) If, after further review, the state GED administrator does not approve issuance of the certificate or cancels a certificate, this decision may be appealed to the commissioner of education under Chapter 157 of this title (relating to Hearings and Appeals).

Source: The provisions of this §89.47 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective September 1, 1999, 24 TexReg 386; amended to be effective April 18, 2002, 27 TexReg 3061; amended to be effective June 6, 2004, 29 TexReg 5343; amended to be effective October 15, 2006, 31 TexReg 8361.

§89.48. State Administrator.

The commissioner of education shall designate the state administrator of General Educational Development (GED) testing and the certificate of high school equivalency program.

Source: The provisions of this §89.48 adopted to be effective September 1, 1996, 21 TexReg 5690.

Subchapter D. Special Education Services and Settings

Statutory Authority: The provisions of this Subchapter D issued under Texas Education Code, §§30.003(d) and (g), 30.004(b), and 42.151(e) and (g), unless otherwise noted.

§89.61. Contracting for Residential Educational Placements for Students with Disabilities.

(a) Residential placement. A school district may contract for residential placement of a student when the student's admission, review, and dismissal (ARD) committee determines that a residential placement is necessary in order for the student to receive a free appropriate public education (FAPE).

(1) A school district may contract for a residential placement of a student only with either public or private residential facilities which maintain current and valid licensure by the Texas Department of Mental Health and Mental Retardation, Texas Department of Human Services, Texas Department of Health, Texas Department of Protective and Regulatory Services, or Texas Council on Alcohol and Drug Abuse for the particular disabling condition and age of the student. A school district may contract for an out-of-state residential placement in accordance with the provisions of subsection (c)(3) of this section.

(2) Subject to subsections (b) and (c) of this section, the district may contract with a residential facility to provide some or all of the special education services listed in the contracted student's individualized education program (IEP). If the facility provides any educational services listed in the student's IEP, the facility's education program must be approved by the commissioner of education in accordance with subsection (c) of this section.

(3) A school district which intends to contract for residential placement of a student with a residential facility under this section shall notify the Texas Education Agency (TEA) of its intent to contract for the residential placement through the residential application process described in subsection (b) of this section.

(4) The school district has the following responsibilities when making a residential placement.

(A) Before the school district places a student with a disability in, or refers a student to, a residential facility, the district shall initiate and conduct a meeting of the student's ARD committee to develop an IEP for the student in accordance with 34 Code of Federal Regulations, §§300.342-300.347, state statutes, and commissioner of education rules.

(B) For each student, the services which the school district is unable to provide and which the facility will provide shall be listed in the student's IEP.

(C) For each student, the ARD committee shall establish, in writing, criteria and estimated timelines for the student's return to the school district.

(D) The appropriateness of the facility for each student residentially placed shall be documented in the IEP. General screening by a regional education service center is not sufficient to meet the requirements of this subsection.

(E) The school district shall make an initial and an annual on-site visit to verify that the residential facility can, and will, provide the services listed in the student's IEP which the facility has agreed to provide to the student.

(F) For each student placed in a residential facility (both initial and continuing placements), the school district shall verify, during the initial residential placement ARD committee meeting and each subsequent annual ARD committee meeting, that:

(i) the facility meets minimum standards for health and safety;

(ii) residential placement is needed and is documented in the IEP; and

(iii) the educational program provided at the residential facility is appropriate and the placement is the least restrictive environment for the student.

(G) The placement of more than one student, in the same residential facility, may be considered in the same on-site visit to a 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.

(H) When a student who is residentially placed by a school district changes his residence to another Texas school district, and the student continues in the contracted placement, the school district which negotiated the contract shall be responsible for the residential contract for the remainder of the school year.

(b) Application approval process. Requests for approval of state and federal funding for residentially placed students shall be negotiated on an individual student basis through a residential application submitted by the school district to the 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 timelines and criteria, 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; and/or

(F) residential facility provides unfundable/unapprovable services.

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

(A) the education cost of residential contracts shall be funded with state funds on the same basis as nonpublic day school contract costs according to Texas Education Code, §42.151;

(B) related services and residential costs for residential contract students 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 tentative entitlement (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 residential placement, the district through the residential application process may receive additional IDEA-B discretionary funds to pay the balance of the residential contract placement(s) costs; and

(C) funds generated by the formula for residential costs described in subsection (b)(2)(B) of this section shall not exceed the daily rate recommended by the Texas Department of Protective and Regulatory Services for the specific level of care in which the student is placed.

(c) Approval of the education program for facilities which provide educational services. Residential facilities which provide educational services must have their educational programs approved for contracting purposes by the commissioner of education.

(1) If the education program of a residential facility which is not approved by the commissioner of education is being considered for a residential placement by a local school district, the school district should notify the TEA in writing of its intent to place a student at the facility. The TEA shall begin approval procedures and conduct an on-site visit to the facility within 30 calendar days after the TEA has been notified by the local school district. Approval of the education program of a residential facility may be for one, two, or three years.

(2) The commissioner of education shall renew approvals and issue new approvals only for those facilities which have contract students already placed or which have a pending request for residential placement from a school district. This approval does not apply to residential facilities which only provide related services or residential facilities in which the local accredited school district where the facility is located provides the educational program.

(3) School districts which contract for out-of-state residential placement shall do so in accordance with the rules for in-state residential placement in this section, except that the facility must be approved by the appropriate agency in the state in which the facility is located, rather than by the commissioner of education in Texas.

Source: The provisions of this §89.61 adopted to be effective September 1, 2000, 25 TexReg 4530.

§89.62. Support of Students Enrolled in the Texas School for the Blind and Visually Impaired and Texas School for the Deaf.

(a) For each student enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf, the school district responsible for providing appropriate special education and related services to the student shall share the cost of the student's education (excluding the summer programs) as provided under the Texas Education Code, §30.003.

(1) The information required in accordance with the Texas Education Code, §30.003(d), must be submitted in a form prescribed by the commissioner of education within 30 calendar days after the student enrolls in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf.

(2) School districts required to remit their shares to the Texas Education Agency in accordance with the Texas Education Code, §30.003(d), shall do so within 60 days of notification by the commissioner of education.

(b) School districts shall provide, annually, in writing to each parent or legal guardian of an eligible student with visual or auditory impairments, the information specified in the Texas Education Code, §30.004(a)(1-3), before considering the student's placement for special education services.

Source: The provisions of this §89.62 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.63. Instructional Arrangements and Settings.

(a) Each local school district shall be able to provide services with special education personnel to students with disabilities in order to meet the special needs of those students in accordance with 34 Code of Federal Regulations, §§300.550-300.554.

(b) Subject to §89.1075(e) of this title (relating to General Program Requirements and Local District Procedures) for the purpose of determining the student's instructional arrangement/setting, the regular school day is defined as the period of time determined appropriate by the admission, review, and dismissal (ARD) committee.

(c) Instructional arrangements/settings shall be based on the individual needs and individualized education programs (IEPs) of eligible students receiving special education 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 regular 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 regular classroom teacher(s) necessary to enrich the regular 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, education aides, curricular or

instructional modifications/accommodations, special materials/equipment, consultation with the student and his/her regular classroom teacher(s) regarding the student's progress in regular education classes, staff development, and reduction of ratio of students to instructional staff.

(2) Homebound. This instructional arrangement/setting is for providing special education and related services to students who are served at home or hospital bedside.

(A) Students served on a homebound or hospital bedside basis are expected to be confined for a minimum of four consecutive weeks as documented by a physician licensed to practice in the United States. Homebound or hospital bedside instruction may, as provided by local district policy, also be provided to chronically ill students who are expected to be confined for any period of time totaling at least four weeks throughout the school year as documented by a physician licensed to practice in the United States. The student's ARD committee shall determine the amount of services to be provided to the student in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in subsection (b) of this section.

(B) Home instruction may also be used for services to infants and toddlers (birth through age 2) and young children (ages 3-5) when determined appropriate by the child's individualized family services plan (IFSP) committee or ARD committee. This arrangement/setting also applies to school districts described in Texas Education Code, §29.014.

(3) Hospital class. This instructional arrangement/setting is for providing special education instruction in a classroom, in a hospital facility, or a residential care and treatment facility not operated by the school district. If the students residing in the facility are provided special education services outside the facility, they are considered to be served in the instructional arrangement in which they are placed and are not to be considered as in a hospital class.

(4) Speech therapy. This instructional arrangement/setting is for providing speech therapy services whether in a regular education classroom or in a setting other than a regular education classroom. When the only special education or related service provided to a student is speech therapy, then this instructional arrangement may not be combined with any other instructional arrangement.

(5) Resource room/services. This instructional arrangement/setting is for providing special education and related services to a student in a setting other than regular education for less than 50% of the regular school 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 self-contained program for 50% or more of the regular school day on a regular school campus.

(7) Off home campus. This instructional arrangement/setting is for providing special education and related services to the following, including students at South Texas Independent School District and Windham Independent School District:

(A) a student who is one of a group of students from more than one school district served in a single location when a free appropriate public education is not available in the respective sending district;

(B) a student whose instruction is provided by school district personnel in a facility (other than a nonpublic day school) not operated by a school district; or

(C) 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 for special education.

(9) Vocational adjustment class/program. This instructional arrangement/setting is for providing special education and related services to a student who is placed on a job 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 individual transition plan and only after the school district's career and technology classes have been considered and determined inappropriate for the student.

(10) Residential care and treatment facility (not school district resident). This instructional arrangement/setting is for providing special education instruction and related services to students who reside in care and treatment facilities and whose parents do not reside within the boundaries of the school district providing educational services to the students. In order to be considered in this arrangement, the services must be provided on a school district campus. 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. 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 school for persons with mental retardation. This instructional arrangement/setting is for providing special education and related services to a student who resides at a state school when the services are provided at the state school 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.

(d) The appropriate instructional arrangement for students from birth through the age of two with visual and/or auditory impairments shall be determined in accordance with the IFSP, current attendance guidelines, and the agreement memorandum between the Texas Education Agency (TEA) and the Texas Interagency Council on Early Childhood Intervention.

(e) For nonpublic day school placements, the school district or shared service arrangement shall submit information to the TEA indicating the students' identification numbers, initial dates of placement, and the names of the facilities with which the school district or shared service arrangement is contracting. The school district or shared service arrangement shall not count contract students' average daily attendance as eligible. The TEA shall determine the number of contract students reported in full-time equivalents and pay state funds to the district according to the formula prescribed in law.

(f) Other program options which 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 the TEA.

Source: The provisions of this §89.63 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective September 1, 2000, 25 TexReg4531.