ATTACHMENT I

Statutory Citations Relating to Amendments and Repeal to 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter AA, Commissioner's Rules Concerning Special Education Services

34 Code of Federal Regulations, §300.100, Eligibility for assistance.

A State is eligible for assistance under Part B of the Act for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets the conditions in Sec. Sec. 300.101 through 300.176.

(Authority: 20 U.S.C. 1412(a))

34 Code of Federal Regulations, §300.111, Child find.

(a) General.

(1) The State must have in effect policies and procedures to ensure that--

(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(b) Use of term developmental delay. The following provisions apply with respect to implementing the child find requirements of this section:

(1) A State that adopts a definition of developmental delay under Sec. 300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five).

(2) A State may not require an LEA to adopt and use the term developmental delay for any children within its jurisdiction.

(3) If an LEA uses the term developmental delay for children described in Sec. 300.8(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State.

(4) If a State does not adopt the term developmental delay, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part.

(c) Other children in child find. Child find also must include--

(1) Children who are suspected of being a child with a disability under Sec. 300.8 and in need of special education, even though they are advancing from grade to grade; and

(2) Highly mobile children, including migrant children.

(d) Construction. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in Sec. 300.8 and who, by reason of

that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

(Authority: 20 U.S.C. 1401(3); 1412(a)(3))

34 Code of Federal Regulations, §300.114, LRE requirements.

(a) General.

(1) Except as provided in Sec. 300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and Sec. Sec. 300.115 through 300.120.

(2) Each public agency must ensure that--

(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) Additional requirement--State funding mechanism.

(1) General.

(i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and

(ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.

(2) Assurance. If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.

(Authority: 20 U.S.C. 1412(a)(5))

34 Code of Federal Regulations, §300.121, Procedural safeguards.

(a) General. The State must have procedural safeguards in effect to ensure that each public agency in the State meets the requirements of Sec. Sec. 300.500 through 300.536.

(b) Procedural safeguards identified. Children with disabilities and their parents must be afforded the procedural safeguards identified in paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(a)(6)(A))

34 Code of Federal Regulations, §300.124, Transition of children from the Part C program to preschool programs.

The State must have in effect policies and procedures to ensure that--

(a) Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the Act;

(b) By the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with Sec. 300.323(b) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with Sec. 300.101(b); and

(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the Act.

(Authority: 20 U.S.C. 1412(a)(9))

34 Code of Federal Regulations, §300.129, State responsibility regarding children in private schools.

The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in Sec. Sec. 300.130 through 300.148.

(Authority: 20 U.S.C. 1412(a)(10))

34 Code of Federal Regulations, §300.307, Specific learning disabilities.

(a) General. A State must adopt, consistent with Sec. 300.309, criteria for determining whether a child has a specific learning disability as defined in Sec. 300.8(c)(10). In addition, the criteria adopted by the State--

(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in Sec. 300.8(c)(10);

(2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and

(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in Sec. 300.8(c)(10).

(b) Consistency with State criteria. A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

Texas Education Code, §29.001, Statewide Plan.

The agency shall develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of three and 21. The statewide design shall include the provision of services primarily

through school districts and shared services arrangements, supplemented by regional education service centers. The agency shall also develop and implement a statewide plan with programmatic content that includes procedures designed to:

(1) ensure state compliance with requirements for supplemental federal funding for all state-administered programs involving the delivery of instructional or related services to students with disabilities;

(2) facilitate interagency coordination when other state agencies are involved in the delivery of instructional or related services to students with disabilities;

(3) periodically assess statewide personnel needs in all areas of specialization related to special education and pursue strategies to meet those needs through a consortium of representatives from regional education service centers, local education agencies, and institutions of higher education and through other available alternatives;

(4) ensure that regional education service centers throughout the state maintain a regional support function, which may include direct service delivery and a component designed to facilitate the placement of students with disabilities who cannot be appropriately served in their resident districts;

(5) allow the agency to effectively monitor and periodically conduct site visits of all school districts to ensure that rules adopted under this section are applied in a consistent and uniform manner, to ensure that districts are complying with those rules, and to ensure that annual statistical reports filed by the districts and not otherwise available through the Public Education Information Management System under Section 42.006, are accurate and complete;

(6) ensure that appropriately trained personnel are involved in the diagnostic and evaluative procedures operating in all districts and that those personnel routinely serve on district admissions, review, and dismissal committees;

(7) ensure that an individualized education program for each student with a disability is properly developed implemented, and maintained in the least restrictive environment that is appropriate to meet the student's educational needs;

(8) ensure that, when appropriate, each student with a disability is provided an opportunity to participate in career and technology and physical education classes, in addition to participating in regular or special classes;

(9) ensure that each student with a disability is provided necessary related services; and

(10) ensure that an individual assigned to act as a surrogate parent for a child with a disability, as provided by 20 U.S.C. Section 1415(b) and its subsequent amendments, is required to:

(A) complete a training program that complies with minimum standards established by agency rule;

(B) visit the child and the child's school;

(C) consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers;

(D) review the child's educational records;

(E) attend meetings of the child's admission, review, and dismissal committee;

(F) exercise independent judgment in pursuing the child's interests; and

(G) exercise the child's due process rights under applicable state and federal law.

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1999, 76th Leg., ch. 430, § 1, eff. Sept. 1, 1999.

Texas Education Code, §29.003. Eligibility Criteria.

(a) The agency shall develop specific eligibility criteria based on the general classifications established by this section with reference to contemporary diagnostic or evaluative terminologies and techniques. Eligible students with disabilities shall enjoy the right to a free appropriate public education, which may include instruction in the regular classroom, instruction through special teaching, or instruction through contracts approved under this subchapter. Instruction shall be supplemented by the provision of related services when appropriate.

(b) A student is eligible to participate in a school district's special education program if the student:

(1) is not more than 21 years of age and has a visual or auditory impairment that prevents the student from being adequately or safely educated in public school without the provision of special services; or

(2) is at least three but not more than 21 years of age and has one or more of the following disabilities that prevents the student from being adequately or safely educated in public school without the provision of special services:

(A) physical disability;

(B) mental retardation;

(C) emotional disturbance;

(D) learning disability;

(E) autism;

(F) speech disability; or

(G) traumatic brain injury.

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995.

Texas Education Code, §29.005. Individualized Education Program.

(a) Before a child is enrolled in a special education program of a school district, the district shall establish a committee composed of the persons required under 20 U.S.C. Section 1401(11) to develop the child's individualized education program.

(b) The committee shall develop the individualized education program by agreement of the committee members or, if those persons cannot agree, by an alternate method provided by the agency. Majority vote may not be used to determine the individualized education program.

(c) If the individualized education program is not developed by agreement, the written statement of the program required under 20 U.S.C. Section 1401(11) must include the basis of the disagreement.

(d) If the child's parent is unable to speak English, the district shall:

(1) provide the parent with a written or audio taped copy of the child's individualized education program translated into Spanish if Spanish is the parent's native language; or

(2) if the parent's native language is a language other than Spanish, make a good faith effort to provide the parent with a written or audiotaped copy of the child's individualized education program translated into the parent's native language.

(e) The commissioner by rule may require a school district to include in the individualized education program of a student with autism or another pervasive developmental disorder any information or requirement determined necessary to ensure the student receives a free appropriate public education as required under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1999, 76th Leg., ch. 1372, § 1, eff. June 19, 1999; Acts 2001, 77th Leg., ch. 767, § 3, eff. June 13, 2001; Acts 2005, 79th Leg., ch. 838, § 12, eff. Sept. 1, 2005.

Texas Education Code, §29.010. Compliance.

(a) The agency shall adopt and implement a comprehensive system for monitoring school district compliance with federal and state laws relating to special education. The monitoring system must provide for ongoing analysis of district special education data and of complaints filed with the agency concerning special education services and for inspections of school districts at district facilities. The agency shall use the information obtained through analysis of district data and from the complaints management system to determine the appropriate schedule for and extent of the inspection.

(b) To complete the inspection, the agency must obtain information from parents and teachers of students in special education programs in the district.

(c) The agency shall develop and implement a system of sanctions for school districts whose most recent monitoring visit shows a failure to comply with major requirements of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.), federal regulations, state statutes, or agency requirements necessary to carry out federal law or regulations or state law relating to special education.

(d) For districts that remain in noncompliance for more than one year, the first stage of sanctions shall begin with annual or more frequent monitoring visits. Subsequent sanctions may range in severity up to the withholding of funds. If funds are withheld, the agency may use the funds to provide, through alternative arrangements, services to students and staff members in the district from which the funds are withheld.

(e) The agency's complaint management division shall develop a system for expedited investigation and resolution of complaints concerning a district's failure to provide special education or related services to a student eligible to participate in the district's special education program.

(f) This section does not create an obligation for or impose a requirement on a school district or open-enrollment charter school that is not also created or imposed under another state law or a federal law.

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1999, 76th Leg., ch. 1417, § 1, eff. June 19, 1999.

Texas Education Code, §29.011. Transition Planning.

The commissioner shall by rule adopt procedures for compliance with federal requirements relating to transition services for students who are enrolled in special education programs under this subchapter. The procedures must specify the manner in which a student's admission, review, and dismissal committee must consider, and if appropriate, address the following issues in the student's individualized education program:

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

(2) if the student is younger than 18 years of age, appropriate parental involvement in the student's transition;

(3) if the student is at least 18 years of age, appropriate parental involvement in the student's transition, if the parent is invited to participate by the student or the school district in which the student is enrolled;

(4) any postsecondary education options;

(5) a functional vocational evaluation;

(6) employment goals and objectives;

(7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments;

(8) independent living goals and objectives; and

(9) appropriate circumstances for referring a student or the student's parents to a governmental agency for services.

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 2003, 78th Leg., ch. 704, § 1, 2, eff. June 20, 2003.

Texas Education Code, §29.015. Foster Parents.

(a) The school district shall give preferential consideration to a foster parent of a child with a disability when assigning a surrogate parent for the child.

(b) A foster parent may act as a parent of a child with a disability, as authorized under 20 U.S.C. Section 1415(b) and its subsequent amendments, if:

(1) the Department of Protective and Regulatory Services is appointed as the temporary or permanent managing conservator of the child;

(2) the child has been placed with the foster parent for at least 60 days;

(3) the foster parent agrees to:

(A) participate in making educational decisions on the child's behalf; and

(B) complete a training program for surrogate parents that complies with minimum standards established by agency rule; and

(4) the foster parent has no interest that conflicts with the child's interests.

(c) A foster parent who is denied the right to act as a surrogate parent or a parent under this section by a school district may file a complaint with the agency in accordance with federal law and regulations.

Added by Acts 1999, 76th Leg., ch. 430, § 2, eff. Sept. 1, 1999.

Texas Education Code, §29.017. Transfer of Parental Rights at Age of Majority.

(a) A student with a disability who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, shall have the same right to make educational decisions as a student without a disability, except that the school district shall provide any notice required by this subchapter or 20 U.S.C. Section 1415 to both the student and the parents. All other rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to the student.

(b) All rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to students who are incarcerated in an adult or juvenile, state or local correctional institution.

(c) In accordance with 34 C.F.R. Section 300.517, the school district shall notify the student and the parents of the transfer of rights under this section.

(d) The commissioner shall adopt rules implementing the provisions of 34 C.F.R. Section 300.517(b).

Added by Acts 2001, 77th Leg., ch. 767, § 8, eff. June 13, 2001.

Texas Education Code, §30.001. Coordination of Services to Children with Disabilities.

(a) In this section, "children with disabilities" means students eligible to participate in a school district's special education program under Section 29.003.

(b) The commissioner, with the approval of the State Board of Education, shall develop and implement plan for the coordination of services to children with disabilities in each region served by a regional education service center. The plan must include procedures for:

(1) identifying existing public or private educational and related services for children with disabilities in each region;

(2) identifying and referring children with disabilities who cannot be appropriately served by the school district in which they reside to other appropriate programs;

(3) assisting school districts to individually or cooperatively develop programs to identify and provide appropriate services for children with disabilities;

(4) expanding and coordinating services provided by regional education service centers for children with disabilities; and

(5) providing for special services, including special seats, books, instructional media, and other supplemental supplies and services required for proper instruction.

(c) The commissioner may allocate appropriated funds to regional education service centers or may otherwise spend those funds, as necessary, to implement this section.

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995.

Texas Education Code, §30.002. Education for Children with Visual Impairments.

(a) The agency shall develop and administer a comprehensive statewide plan for the education of children with visual impairments who are under 21 years of age that will ensure that the children have an opportunity for achievement equal to the opportunities afforded their peers with normal vision.

(b) The agency shall:

(1) develop standards and guidelines for all special education services for children with visual impairments that it is authorized to provide or support under this code;

(2) supervise regional education service centers and other entities in assisting school districts in serving children with visual impairments more effectively;

(3) develop and administer special education services for students with both serious visual and auditory impairments;

(4) evaluate special education services provided for children with visual impairments by school districts and approve or disapprove state funding of those services; and

(5) maintain an effective liaison between special education programs provided for children with visual impairments by school districts and related initiatives of the Texas Commission for the Blind, the Texas Department of Mental Health and Mental Retardation, the Texas School for the Blind and Visually Impaired, and other related programs, agencies, or facilities as appropriate.

(c) The comprehensive statewide plan for the education of children with visual impairments must:

(1) adequately provide for comprehensive diagnosis and evaluation of each school-age child with a serious visual impairment;

(2) include the procedures, format, and content of the individualized education program for each child with a visual impairment;

(3) emphasize providing educational services to children with visual impairments in their home communities whenever possible;

(4) include methods to ensure that children with visual impairments receiving special education services in school districts receive, before being placed in a classroom setting or within a reasonable time after placement, the training in compensatory skills, communicative skills, orientation and mobility, and social adjustment skills, and the vocational or career counseling, required for those students to succeed in classroom settings and to derive lasting, practical benefits from the education in the school district;

(5) provide for flexibility on the part of school districts to meet the special needs of children with visual impairments through:

(A) specialty staff and resources provided by the district;

(B) contractual arrangements with other qualified public or private agencies;

(C) supportive assistance from regional education service centers or adjacent school districts;

(D) short-term or long-term services through the Texas School for the Blind and Visually Impaired or related facilities or programs; or

(E) other instructional and service arrangements approved by the agency;

(6) include a statewide admission, review, and dismissal process;

(7) provide for effective interaction between the visually impaired child's classroom setting and the child's home environment, including providing for parental training and counseling either by school district staff or by representatives of other organizations directly involved in the development and implementation of the individualized education program for the child;

(8) require the continuing education and professional development of school district staff providing special education services to children with visual impairments;

(9) provide for adequate monitoring and precise evaluation of special education services provided to children with visual impairments through school districts; and

(10) require that school districts providing special education services to children with visual impairments develop procedures for assuring that staff assigned to work with the children have prompt and effective access directly to resources available through:

(A) cooperating agencies in the area;

(B) the Texas School for the Blind and Visually Impaired;

(C) the Central Media Depository for specialized instructional materials and aids made specifically for use by students with visual impairments;

(D) sheltered workshops participating in the state program of purchases of blind-made goods and services; and

(E) related sources.

(d) In developing, administering, and coordinating the statewide plan, the agency shall encourage the use of all pertinent resources, whether those resources exist in special education programs or in closely related programs operated by other public or private agencies, through encouraging the development of shared services arrangement working relationships and by assisting in the development of contractual arrangements between school districts and other organizations. The agency shall discourage interagency competition, overlap, and duplication in the development of specialized resources and the delivery of services.

(e) Each eligible blind or visually impaired student is entitled to receive educational programs according to an individualized education program that:

(1) is developed in accordance with federal and state requirements for providing special education services;

(2) is developed by a committee composed as required by federal law;

(3) reflects that the student has been provided a detailed explanation of the various service resources available to the student in the community and throughout the state;

(4) provides a detailed description of the arrangements made to provide the student with orientation and mobility training, instruction in Braille or use of large print, other training to compensate for serious visual loss, access to special media and

special tools, appliances, aids, or devices commonly used by individuals with serious visual impairments; and

(5) sets forth the plans and arrangements made for contacts with and continuing services to the student beyond regular school hours to ensure the student learns the skills and receives the training required under Subsection (c)(4).

(f) In the development of the individualized education program for a functionally blind student, proficiency in Braille reading and writing is presumed to be essential for the student's satisfactory educational progress. Each functionally blind student is entitled to Braille reading and writing instruction that is sufficient to enable the student to communicate with the same level of proficiency as other students of comparable ability who are at the same grade level. Braille instruction may be used in combination with other special education services appropriate to the student's educational needs. The assessment of each functionally blind student for the purpose of developing the student's individualized education program must include documentation of the student's strengths and weaknesses in Braille skills. Each person assisting in the development of a functionally blind student's individualized education program shall receive information describing the benefits of Braille instruction. Each functionally blind student's individualized education program must specify the appropriate learning medium based on the assessment report and ensure that instruction in Braille will be provided by a teacher certified to teach students with visual impairments. For purposes of this subsection, the agency shall determine the criteria for a student to be classified as functionally blind.

(g) To facilitate implementation of this section, the commissioner shall develop a system to distribute from the foundation school fund to school districts or regional education service centers a special supplemental allowance for each student with a visual impairment and for each student with a serious visual disability and another medically diagnosed disability of a significantly limiting nature who is receiving special education services through any approved program. The supplemental allowance may be spent only for special services uniquely required by the nature of the student's disabilities and may not be used in lieu of educational funds otherwise available under this code or through state or local appropriations.

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995.

Texas Education Code, §30.0015. Transfer of Assistive Technology Devices.

(a) In this section:

(1) "Assistive technology device" means any device, including equipment or a product system, that is used to increase, maintain, or improve functional capabilities of a student with a disability.

(2) "Student with a disability" means a student who is eligible to participate in a school district's special education program under Section 29.003.

(3) "Transfer" means the process by which a school district that has purchased an assistive technology device may sell, lease, or loan the device for the continuing use of a student with a disability changing the school of attendance in the district or leaving the district.

(b) The agency by rule shall develop and annually disseminate standards for a school district's transfer of an assistive technology device to an entity listed in this subsection when a student with a disability using the device changes the school of attendance in the district or ceases to attend school in the district that purchased the device and the

student's parents, or the student if the student has the legal capacity to enter into a contract, agrees to the transfer. The device may be transferred to:

(1) the school or school district in which the student enrolls;

(2) a state agency, including the Texas Rehabilitation Commission and the Texas Department of Mental Health and Mental Retardation, that provides services to the student following the student's graduation from high school; or

(3) the student's parents, or the student if the student has the legal capacity to enter into a contract.

(c) The standards developed under this section must include:

(1) a uniform transfer agreement to convey title to an assistive technology device and applicable warranty information;

(2) a method for computing the fair market value of an assistive technology device, including a reasonable allowance for use; and

(3) a process to obtain written consent by the student's parents, or the student where appropriate, to the transfer.

(d) This section does not alter any existing obligation under federal or state law to provide assistive technology devices to students with disabilities.

Added by Acts 1999, 76th Leg., ch. 682, § 1, eff. June 18, 1999.

Texas Education Code, §30.083. Statewide Plan.

(a) The director of services shall develop and administer a comprehensive statewide plan for educational services for students who are deaf or hard of hearing, including continuing diagnosis and evaluation, counseling, and teaching. The plan shall be designed to accomplish the following objectives:

(1) providing assistance and counseling to parents of students who are deaf or hard of hearing in regional day school programs for the deaf and admitting to the programs students who have a hearing loss that interferes with the processing of linguistic information;

(2) enabling students who are deaf or hard of hearing to reside with their parents or guardians and be provided an appropriate education in their home school districts or in regional day school programs for the deaf;

(3) enabling students who are deaf or hard of hearing who are unable to attend schools at their place of residence and whose parents or guardians live too far from facilities of regional day school programs for the deaf for daily commuting to be accommodated in foster homes or other residential school facilities provided for by the agency so that those children may attend a regional day school program for the deaf;

(4) enrolling in the Texas School for the Deaf those students who are deaf or hard of hearing whose needs can best be met in that school and designating the Texas School for the Deaf as the statewide educational resource for students who are deaf or hard of hearing;

(5) encouraging students in regional day school programs for the deaf to attend general education classes on a part-time, full-time, or trial basis; and

(6) recognizing the need for development of language and communications abilities in students who are deaf or hard of hearing, but also calling for the use of methods of communication that will meet the needs of each individual student, with each student assessed thoroughly so as to ascertain the student's potential for communications through a variety of means, including through oral or aural means, finger spelling, or sign language.

(b) The director of services may establish separate programs to accommodate diverse communication methodologies.

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995.

Texas Education Code, §37.0021. Use of Confinement, Restraint, Seclusion, and Time-Out.

(a) It is the policy of this state to treat with dignity and respect all students, including students with disabilities who receive special education services under Subchapter A, Chapter 29. A student with a disability who receives special education services under Subchapter A, Chapter 29, may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique.

(b) In this section:

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

(2) "Seclusion" means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that:

(A) is designed solely to seclude a person; and

(B) contains less than 50 square feet of space.

(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) A school district employee or volunteer or an independent contractor of a district may not place a student in seclusion. This subsection does not apply to the use of seclusion in a court-ordered placement, other than a placement in an educational program of a school district, or in a placement or facility to which the following law, rules, or regulations apply:

(1) the Children's Health Act of 2000, Pub. L. No. 106-310, any subsequent amendments to that Act, any regulations adopted under that Act, or any subsequent amendments to those regulations;

(2) 40 T.A.C. Sections 720.1001-720.1013; or

(3) 25 T.A.C. Section 412.308(e).

(d) The commissioner by rule shall adopt procedures for the use of restraint and time-out by a school district employee or volunteer or an independent contractor of a district in the

case of a student with a disability receiving special education services under Subchapter A, Chapter 29. A procedure adopted under this subsection must:

(1) be consistent with:

(A) professionally accepted practices and standards of student discipline and techniques for behavior management; and

(B) relevant health and safety standards; and

(2) identify any discipline management practice or behavior management technique that requires a district employee or volunteer or an independent contractor of a district to be trained before using that practice or technique.

(e) In the case of a conflict between a rule adopted under Subsection (d) and a rule adopted under Subchapter A, Chapter 29, the rule adopted under Subsection (d) controls.

(f) For purposes of this subsection, "weapon" includes any weapon described under Section 37.007(a)(1). This section does not prevent a student's locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement personnel if:

(1) the student possesses a weapon; and

(2) the confinement is necessary to prevent the student from causing bodily harm to the student or another person.

(g) This section and any rules or procedures adopted under this section do not apply to:

(1) a peace officer while performing law enforcement duties;

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

(3) 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.

Added by Acts 2001, 77th Leg., ch. 212, § 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1055, § 6, eff. June 20, 2003.

Texas Education Code, §37.007. Expulsion for Serious Offenses.

(a) A student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property:

(1) uses, exhibits, or possesses:

(A) a firearm as defined by Section 46.01(3), Penal Code;

(B) an illegal knife as defined by Section 46.01(6), Penal Code, or by local policy;

(C) a club as defined by Section 46.01(1), Penal Code; or

(D) a weapon listed as a prohibited weapon under Section 46.05, Penal Code;

(2) engages in conduct that contains the elements of the offense of:

(A) aggravated assault under Section 22.02, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(B) arson under Section 28.02, Penal Code;

(C) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;

(D) indecency with a child under Section 21.11, Penal Code;

(E) aggravated kidnapping under Section 20.04, Penal Code;

(F) aggravated robbery under Section 29.03, Penal Code;

(G) manslaughter under Section 19.04, Penal Code; or

(H) criminally negligent homicide under Section 19.05, Penal Code; or

(3) engages in conduct specified by Section 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

(b) A student may be expelled if the student:

(1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code;

(2) while on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:

(A) sells, gives, or delivers to another person or possesses, uses, or is under the influence of any amount of:

(i) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;

(ii) a dangerous drug, as defined by Chapter 483, Health and Safety Code; or

(iii) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;

(B) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Sections 485.031 through 485.034, Health and Safety Code;

(C) engages in conduct that contains the elements of an offense under Section 22.01(a)(1), Penal Code, against a school district employee or a volunteer as defined by Section 22.053; or

(D) engages in conduct that contains the elements of the offense of deadly conduct under Section 22.05, Penal Code;

(3) subject to Subsection (d), while within 300 feet of school property, as measured from any point on the school's real property boundary line:

(A) engages in conduct specified by Subsection (a); or

(B) possesses a firearm, as defined by 18 U.S.C. Section 921; or

(4) engages in conduct that contains the elements of any offense listed in Subsection (a)(2)(A) or (C) or the offense of aggravated robbery under Section 29.03, Penal Code, against another student, without regard to whether the conduct occurs on

or off of school property or while attending a school-sponsored or school-related activity on or off of school property.

(c) A student may be expelled if the student, while placed in an alternative education program for disciplinary reasons, continues to engage in serious or persistent misbehavior that violates the district's student code of conduct.

(d) A student shall be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection (a), and may be expelled if the student engages in conduct that contains the elements of any offense listed in Subsection (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, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property.

(e) In accordance with 20 U.S.C. Section 7151, a local educational agency, including a school district, home-rule school district, or open-enrollment charter school, shall expel a student who brings a firearm, as defined by 18 U.S.C. Section 921, to school. The student must be expelled from the student's regular campus for a period of at least one year, except that:

(1) the superintendent or other chief administrative officer of the school district or of the other local educational agency, as defined by 20 U.S.C. Section 7801, may modify the length of the expulsion in the case of an individual student;

(2) the district or other local educational agency shall provide educational services to an expelled student in a disciplinary alternative education program as provided by Section 37.008 if the student is younger than 10 years of age on the date of expulsion; and

(3) the district or other local educational agency may provide educational services to an expelled student who is 10 years of age or older in a disciplinary alternative education program as provided in Section 37.008.

(f) A student who engages in conduct that contains the elements of the offense of criminal mischief under Section 28.03, Penal Code, may be expelled at the district's discretion if the conduct is punishable as a felony under that section. The student shall be referred to the authorized officer of the juvenile court regardless of whether the student is expelled.

(g) In addition to any notice required under Article 15.27, Code of Criminal Procedure, a school district shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction of a student who has engaged in any violation listed in this section of the student's misconduct. Each educator shall keep the information received under this subsection confidential from any person not entitled to the information under this subsection, except that the educator may share the information with the student's parent or guardian as provided for by state or federal law. The State Board for Educator Certification may revoke or suspend the certification of an educator who intentionally violates this subsection.

(h) Subject to Subsection (e), notwithstanding any other provision of this section, a student who is younger than 10 years of age may not be expelled for engaging in conduct described by this section.

(i) A student who engages in conduct described by Subsection (a) may be expelled from school by the district in which the student attends school if the student engages in that conduct:

(1) on school property of another district in this state; or

(2) while attending a school-sponsored or school-related activity of a school in another district in this state.

Added by Acts 1995, 74th Leg., ch. 260, § 1, eff. May 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1015, § 5, eff. June 19, 1997; Acts 1999, 76th Leg., ch. 542, § 1, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 486, § 2, eff. June 11, 2001; Acts 2003, 78th Leg., ch. 225, § 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 443, § 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1055, § 10, eff. June 20, 2003; Acts 2005, 79th Leg., ch. 504, § 4, eff. June 17, 2005; Acts 2005, 79th Leg., ch. 728, § 5.004, eff. Sept. 1, 2005.