

ATTACHMENT II
Text of Adopted Amendments and Repeal to 19 TAC

Chapter 89. Adaptations for Special Populations

Subchapter AA. Commissioner's Rules Concerning Special Education Services

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

§89.1011. Referral for Full and Individual Initial Evaluation.

Referral of students for a full and individual initial evaluation for possible special education services shall be a part of the district's overall, general education referral or screening system. Prior to referral, students experiencing difficulty in the general classroom should be considered for all support services available to all students, such as tutorial ; [] remedial ; [] compensatory ; [] response to scientific, research-based intervention; and other academic or behavior support services. If the student continues to experience difficulty in the general classroom after the provision of interventions, district personnel must refer the student for a full and individual initial evaluation. This referral for a full and individual initial evaluation may be initiated by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student.

§89.1040. Eligibility Criteria.

- (a) Special education services. To be eligible to receive special education services, a student must be a "child with a disability," as defined in 34 Code of Federal Regulations (CFR), §300.8(a), [~~§300.7(a)~~] subject to the provisions of 34 CFR, §300.8(c), [~~§300.7(e)~~] the Texas Education Code (TEC), §29.003, and this section. The provisions in this section specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law.
- (b) Eligibility determination. The determination of whether a student is eligible for special education and related services is made by the student's admission, review, and dismissal (ARD) committee. Any evaluation or re-evaluation of a student shall be conducted in accordance with 34 CFR, §§~~300.301-300.306~~ and 300.122, [~~§§300.530-300.536~~]. The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility must include, but is not limited to, the following:
- (1) a licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability; or
 - (2) a licensed or certified professional for a specific eligibility category defined in subsection (c) of this section.
- (c) Eligibility definitions.
- (1) Autism. A student with autism is one who has been determined to meet the criteria for autism as stated in 34 CFR, §300.8(c)(1), [~~§300.7(e)(1)~~]. Students with pervasive developmental disorders are included under this category. The team's written report of evaluation shall include specific recommendations for behavioral interventions and strategies.
 - (2) Deaf-blindness. A student with deaf-blindness is one who has been determined to meet the criteria for deaf-blindness as stated in 34 CFR, §300.8(c)(2), [~~§300.7(e)(2)~~]. In meeting the criteria stated in 34 CFR, §300.8(c)(2), [~~§300.7(e)(2)~~], a student with deaf-blindness is one who, based on the evaluations specified in subsections (c)(3) and (c)(12) of this section:
 - (A) meets the eligibility criteria for auditory impairment specified in subsection (c)(3) of this section and visual impairment specified in subsection (c)(12) of this section;
 - (B) meets the eligibility criteria for a student with a visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, but a speech/language therapist, a

- certified speech and language therapist, or a licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected;
- (C) has documented hearing and visual losses that, if considered individually, may not meet the requirements for auditory impairment or visual impairment, but the combination of such losses adversely affects the student's educational performance; or
 - (D) has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that, without special education intervention, will adversely affect the student's educational performance.
- (3) Auditory impairment. A student with an auditory impairment is one who has been determined to meet the criteria for deafness as stated in 34 CFR, §300.8(c)(3), [~~§300.7(e)(3).~~] or for hearing impairment as stated in 34 CFR, §300.8(c)(5), [~~§300.7(e)(5).~~] The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility based on an auditory impairment must include an otological examination performed by an otologist or by a licensed medical doctor, with documentation that an otologist is not reasonably available. An audiological evaluation by a licensed audiologist shall also be conducted. The evaluation data shall include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended amplification.
- (4) Emotional disturbance. A student with an emotional disturbance is one who has been determined to meet the criteria for emotional disturbance as stated in 34 CFR, §300.8(c)(4), [~~§300.7(e)(4).~~] The written report of evaluation shall include specific recommendations for behavioral supports and interventions.
- (5) Mental retardation. A student with mental retardation is one who has been determined to meet the criteria for mental retardation as stated in 34 CFR, §300.8(c)(6), [~~§300.7(e)(6).~~] In meeting the criteria stated in 34 CFR, §300.8(c)(6), [~~§300.7(e)(6).~~] a student with mental retardation is one who : [~~has been determined to be functioning at two or more standard deviations below the mean on individually administered scales of verbal ability, and either performance or nonverbal ability, and who concurrently exhibits deficits in adaptive behavior.~~]
- (A) has been determined to have significantly sub-average intellectual functioning as measured by a standardized, individually administered test of cognitive ability in which the overall test score is at least two standard deviations below the mean, when taking into consideration the standard error of measurement of the test; and
 - (B) concurrently exhibits deficits in at least two of the following areas of adaptive behavior: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.
- (6) Multiple disabilities.
- (A) A student with multiple disabilities is one who has been determined to meet the criteria for multiple disabilities as stated in 34 CFR, §300.8(c)(7), [~~§300.7(e)(7).~~] In meeting the criteria stated in 34 CFR, §300.8(c)(7), [~~§300.7(e)(7).~~] a student with multiple disabilities is one who has a combination of disabilities defined in this section and who meets all of the following conditions:
 - (i) the student's disability is expected to continue indefinitely; and
 - (ii) the disabilities severely impair performance in two or more of the following areas:
 - (I) psychomotor skills;
 - (II) self-care skills;
 - (III) communication;
 - (IV) social and emotional development; or
 - (V) cognition.

- (B) Students who have more than one of the disabilities defined in this section but who do not meet the criteria in subparagraph (A) of this paragraph shall not be classified or reported as having multiple disabilities.
- (7) Orthopedic impairment. A student with an orthopedic impairment is one who has been determined to meet the criteria for orthopedic impairment as stated in 34 CFR, §300.8(c)(8). ~~§300.7(c)(8).~~ The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on an orthopedic impairment must include a licensed physician.
- (8) Other health impairment. A student with other health impairment is one who has been determined to meet the criteria for other health impairment due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Disorder as stated in 34 CFR, §300.8(c)(9). ~~§300.7(c)(9). Students with attention deficit disorder or attention deficit hyperactivity disorder are included under this category.~~ The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on other health impairment must include a licensed physician.
- (9) Learning disability.
- (A) Prior to and as part of the evaluation described in subparagraph (B) of this paragraph and 34 CFR, §§300.307-300.311, and in order to ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics, the following must be considered:
- (i) data that demonstrates the child was provided appropriate instruction in reading (as described in 20 USC, §6368(3)), and/or mathematics within general education settings delivered by qualified personnel; and
 - (ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction. Data-based documentation of repeated assessments may include, but is not limited to, response to intervention progress monitoring results, in-class tests on grade-level curriculum, or other regularly administered assessments. Intervals are considered reasonable if consistent with the assessment requirements of a student's specific instructional program.
- ~~[(A) A student with a learning disability is one who has been determined by a multidisciplinary team to meet the criteria for specific learning disability as stated in 34 CFR, §300.7(c)(10), and in whom the team has determined whether a severe discrepancy between achievement and intellectual ability exists in accordance with the provisions in 34 CFR, §§300.540-300.543. A severe discrepancy exists when the student's assessed intellectual ability is above the mentally retarded range, but the student's assessed educational achievement in areas specified in 34 CFR, §300.541, is more than one standard deviation below the student's intellectual ability.]~~
- (B) A student with a learning disability is one who:
- (i) has been determined through a variety of assessment tools and strategies to meet the criteria for a specific learning disability as stated in 34 CFR, §300.8(c)(10), in accordance with the provisions in 34 CFR, §§300.307-300.311; and
 - (ii) does not achieve adequately for the child's age or meet state-approved grade-level standards in oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving when provided appropriate instruction, as indicated by performance on multiple measures such as in-class tests; grade average over time (e.g. six weeks, semester); norm- or criterion-

referenced tests; statewide assessments; or a process based on the child's response to scientific, research-based intervention ; and

(I) does not make sufficient progress when provided a process based on the child's response to scientific, research-based intervention (as defined in 20 USC, §7801(37)) , as indicated by the child's performance relative to the performance of the child's peers on repeated, curriculum-based assessments of achievement at reasonable intervals, reflecting student progress during classroom instruction ; or

(II) exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, grade-level standards, or intellectual ability , as indicated by significant variance among specific areas of cognitive function, such as working memory and verbal comprehension, or between specific areas of cognitive function and academic achievement .

~~[(B) If the multidisciplinary team cannot establish the existence of a severe discrepancy in accordance with subparagraph (A) of this paragraph because of the lack of appropriate evaluation instruments, or if the student does not meet the criteria in subparagraph (A) of this paragraph but the team believes a severe discrepancy exists, the team must document in its written report the areas identified under subparagraph (A) of this paragraph and the basis for determining that the student has a severe discrepancy. The report shall include a statement of the degree of the discrepancy between intellectual ability and achievement.]~~

- (10) Speech impairment. A student with a speech impairment is one who has been determined to meet the criteria for speech or language impairment as stated in 34 CFR, §300.8(c)(11). ~~§300.7(e)(11).~~ The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a speech impairment must include a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech/language pathologist.
- (11) Traumatic brain injury. A student with a traumatic brain injury is one who has been determined to meet the criteria for traumatic brain injury as stated in 34 CFR, §300.8(c)(12). ~~§300.7(e)(12).~~ The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a traumatic brain injury must include a licensed physician, in addition to the licensed or certified practitioners specified in subsection (b)(1) of this section.
- (12) Visual impairment.
- (A) A student with a visual impairment is one who has been determined to meet the criteria for visual impairment as stated in 34 CFR, §300.8(c)(13). ~~§300.7(e)(13).~~ The visual loss should be stated in exact measures of visual field and corrected visual acuity at a distance and at close range in each eye in a report by a licensed ophthalmologist or optometrist. The report should also include prognosis whenever possible. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. In meeting the criteria stated in 34 CFR, §300.8(c)(13), ~~§300.7(e)(13).~~ a student with a visual impairment is one who:
- (i) has been determined by a licensed ophthalmologist or optometrist:
 - (I) to have no vision or to have a serious visual loss after correction; or
 - (II) to have a progressive medical condition that will result in no vision or a serious visual loss after correction.
 - (ii) has been determined by the following evaluations to have a need for special services:
 - (I) a functional vision evaluation by a professional certified in the education of students with visual impairments or a certified orientation

- and mobility instructor. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision and recommendations concerning the need for a clinical low vision evaluation and an orientation and mobility evaluation; and
- (II) a learning media assessment by a professional certified in the education of students with visual impairments. The learning media assessment must include recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the student and whether or not there is a need for ongoing evaluation in this area.
- (B) A student with a visual impairment is functionally blind if, based on the preceding evaluations, the student will use tactual media (which includes Braille) as a primary tool for learning to be able to communicate in both reading and writing at the same level of proficiency as other students of comparable ability.
- (13) Noncategorical. A student between the ages of 3-5 who is evaluated as having mental retardation, emotional disturbance, a specific learning disability, or autism may be described as noncategorical early childhood.

§89.1045. Notice to Parents for Admission, Review, and Dismissal (ARD) Committee Meetings.

- (a) A district shall invite the parents and adult student to participate as members of the admission, review, and dismissal (ARD) committee by providing written notice in accordance with 34 Code of Federal Regulations (CFR), §§300.300, 300.322, and 300.503. [~~§§300.345, 300.503, and 300.505, and Part 300, Appendix A.~~]
- (b) A parent may request an ARD committee meeting at any mutually agreeable time to address specific concerns about his or her child's special education services. The school district must respond to the parent's request either by holding the requested meeting or by requesting assistance through the Texas Education Agency's mediation process. The district should inform parents of the functions of the ARD committee and the circumstances or types of problems for which requesting an ARD committee meeting would be appropriate.

§89.1047. Procedures for Surrogate and Foster Parents.

- (a) An individual assigned to act as a surrogate parent for a student with a disability, in accordance with 34 Code of Federal Regulations (CFR), §300.519, [~~§300.515,~~] relating to surrogate parents, must comply with the requirements specified in Texas Education Code (TEC), §29.001(10).
 - (1) Pursuant to TEC, §29.001(10)(A), an individual assigned to act as a surrogate parent must complete a training program in which the individual is provided with an explanation of the provisions of federal and state laws, rules, and regulations relating to:
 - (A) the identification of a student with a disability;
 - (B) the collection of evaluation and re-evaluation data relating to a student with a disability;
 - (C) the admission, review, and dismissal (ARD) committee process;
 - (D) the development of an individualized education program (IEP), including the consideration of transition services for a student who is at least 16 [14] years of age; [~~and, for a student who is at least 16 years of age, an individual transition plan (ITP);~~]
 - (E) the determination of least restrictive environment;
 - (F) the implementation of an IEP;
 - (G) the procedural rights and safeguards available under 34 CFR, §§300.148, 300.151-300.153, 300.229, 300.300, 300.500-300.520, 300.530-300.537, and 300.610-300.627, [~~§§300.403, 300.500-300.529, 300.560-300.577, and 300.660-300.662;~~] relating to the issues described in 34 CFR, §300.504(c); [~~§300.504(b);~~] and

- (H) the sources that the surrogate parent may contact to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities.
- (2) The training program described in subsection (a)(1) of this section must be provided in the native language or other mode of communication used by the individual who is to serve as a surrogate parent.
- (3) The individual assigned to act as a surrogate parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after ~~[the effective date of this rule or]~~ the date of initial assignment as a surrogate parent ~~]. [, whichever comes later.]~~ Once an individual has completed a training program conducted or provided by or through the Texas Department of Family and Protective Services (TDFPS), ~~[Protective and Regulatory Services (PRS),]~~ a school district, an education service center, or any entity that receives federal funds to provide Individuals with Disabilities Education Act (IDEA) training to parents, the individual shall not be required by any school district to complete additional training in order to continue serving as the student's surrogate parent or to serve as the surrogate parent for other students with disabilities. School districts may provide ongoing or additional training to surrogate parents and/or parents; however, a district cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as a surrogate parent on the grounds that the individual has not been trained.
- (4) ~~A [school district shall provide, or arrange for the provision of, the training program described in subsection (a)(1) of this section, within 90 calendar days after the effective date of this rule for individuals serving as surrogate parents as of the effective date of this rule. Thereafter, a]~~ school district should provide or arrange for the provision of the training program described in subsection (a)(1) of this section prior to assigning an individual to act as a surrogate parent but no later than 90 calendar days after assignment.
- (b) A foster parent may act as a parent of a child with a disability, in accordance with 34 CFR, §300.30, ~~[§300.20]~~ relating to the definition of parent, if he/she complies with the requirements of TEC, §29.015(b), relating to foster parents, including the completion of the training program described in subsection (a)(1) of this section.
- (1) The foster parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after ~~[the effective date of this rule or]~~ the date of initial assignment as the parent ~~]. [, whichever comes later.]~~ Once a foster parent has completed a training program conducted or provided by the TDFPS, ~~[PRS,]~~ a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the foster parent shall not be required by any school district to complete additional training in order to continue serving as his/her child's surrogate parent or parent or to serve as the surrogate parent or parent for other students with disabilities. School districts may provide ongoing or additional training to foster parents and/or parents; however, a district cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as the parent on the grounds that the individual has not been trained.
- (2) ~~A [school district shall provide, or arrange for the provision of, the training program described in subsection (a)(1) of this section, within 90 calendar days after the effective date of this rule for foster parents who are serving as parents as of the effective date of this rule. Thereafter, a]~~ school district should provide or arrange for the provision of the training program described in subsection (a)(1) of this section prior to assigning a foster parent to act as a parent but no later than 90 calendar days after assignment.
- (c) Each school district or shared services arrangement shall develop and implement procedures for conducting an analysis of whether a foster parent or potential surrogate parent has an interest that conflicts with the interests of his/her child. A foster parent in a home which is verified by the TDFPS ~~[PRS]~~ or a child-placing agency shall not be deemed to have a financial conflict of interest by virtue of serving as the foster parent in that home. These homes include, but are not limited to, basic, habilitative, primary medical, or therapeutic foster or foster group homes. In addition, issues concerning quality of care of the child do

not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to TDFPS. ~~[PRS.]~~

- (d) If a school district denies a foster parent the right to serve as a surrogate parent or parent, the school district must provide the foster parent with written notice of such denial within seven calendar days after the date on which the decision is made. The written notice shall:
 - (1) specify the reason(s) the foster parent is being denied the right to serve as the surrogate parent or parent (the notice must specifically explain the interests of the foster parent that conflict with the interests of his/her child); and
 - (2) inform the foster parent of his/her right to file a complaint with the Texas Education Agency in accordance with 34 CFR, §§300.151-300.153, ~~[§§300.660-300.662.]~~ relating to complaint procedures.

§89.1049. Parental Rights Regarding Adult Students.

- (a) In accordance with 34 Code of Federal Regulations (CFR), §300.320(c) ~~[§300.347(e)]~~ and §300.520, ~~[§300.517.]~~ and Texas Education Code (TEC), §29.017, beginning at least one year before a student reaches 18 years of age, the student's individualized education program (IEP) must include a statement that the student has been informed that, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship, all rights granted to the parent under the Individuals with Disabilities Education Act (IDEA), Part B, other than the right to receive any notice required under IDEA, Part B, will transfer to the student upon reaching age 18. After the student reaches the age of 18, except as provided by subsection (b) of this section, the school district shall provide any notice required under IDEA, Part B, to both the adult student and the parent.
- (b) In accordance with 34 CFR, §300.520(a)(2), ~~[§300.517(a)(2).]~~ and TEC, §29.017(a), all rights accorded to a parent under IDEA, Part B, including the right to receive any notice required by IDEA, Part B, will transfer to an 18-year-old student who is incarcerated in an adult or juvenile, state or local correctional institution, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship.
- (c) In accordance with 34 CFR, §300.520(a)(3), ~~[§300.517(a)(3).]~~ a school district must notify in writing the adult student and parent of the transfer of parental rights, as described in subsections (a) and (b) of this section, at the time the student reaches the age of 18. This notification is separate and distinct from the requirement that the student's IEP include a statement relating to the transfer of parental rights beginning at least one year before the student reaches the age of 18. This notification is not required to contain the elements of notice referenced in 34 CFR, §300.503, but must include a statement that parental rights have transferred to the adult student and provide contact information for the parties to use in obtaining additional information.
- (d) A notice under IDEA, Part B, which ~~[that]~~ is required to be given to an adult student and parent does not create a right for the parent to consent to or participate in the proposal or refusal to which the notice relates. For example, a notice of an admission, review, and dismissal (ARD) committee meeting does not constitute invitation to, or create a right for, the parent to attend the meeting. However, in accordance with 34 CFR, §300.321(a)(6), ~~[§300.344(a)(6).]~~ the adult student or the school district may invite individuals who have knowledge or special expertise regarding the student, including the parent.
- (e) Nothing in this section prohibits a valid power of attorney from being executed by an individual who holds rights under IDEA, Part B.

§89.1050. The Admission, Review, and Dismissal (ARD) Committee.

- (a) Each school district shall establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full and individual initial evaluation is conducted pursuant to §89.1011 of this title (relating to Referral for Full and Individual Initial Evaluation). The ARD committee shall be the individualized education program (IEP) team defined in federal law and regulations, including, specifically, 34 Code of Federal Regulations (CFR), §300.321, ~~[§300.344.]~~ The school district shall be responsible for all of the functions for which the IEP team is responsible under federal law and

regulations and for which the ARD committee is responsible under state law, including, specifically, the following:

- (1) 34 CFR, §§300.320-300.325, [~~§§300.340-300.349,~~] and Texas Education Code (TEC), §29.005 (individualized education programs); [~~(Individualized Education Program);~~]
 - (2) 34 CFR, §§300.145-300.147 [~~§§300.400-300.402~~] (relating to placement of eligible students in private schools by a school district);
 - (3) 34 CFR, §§300.132, 300.138, and 300.139 [~~§§300.452, 300.455, and 300.456~~] (relating to the development and implementation of service plans for eligible students placed by parents in private school who have been designated to receive special education and related services);
 - (4) 34 CFR, §300.530 and §300.531, [~~§§300.520, 300.522, and 300.523,~~] and TEC, §37.004 (disciplinary placement of students with disabilities); [~~(Placement of Students with Disabilities);~~]
 - (5) 34 CFR, §§300.302-300.306 [~~§§300.532-300.536~~] (relating to evaluations, re-evaluations, and determination of eligibility);
 - (6) 34 CFR, §§300.114-300.117 [~~§§300.550-300.553~~] (relating to least restrictive environment);
 - (7) TEC, §28.006 (Reading Diagnosis);
 - (8) TEC, §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction);
 - (9) TEC, §28.0212 (Personal Graduation Plan);
 - (10) TEC, §28.0213 (Intensive Program of Instruction);
 - (11) TEC, Chapter 29, Subchapter I (Programs for Students Who Are Deaf or Hard of Hearing);
 - (12) TEC, §30.002 (Education of Children with Visual Impairments);
 - (13) TEC, §30.003 (Support of Students Enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf);
 - (14) TEC, §33.081 (Extracurricular Activities);
 - (15) TEC, Chapter 39, Subchapter B (Assessment of Academic Skills); and
 - (16) TEC, §42.151 (Special Education).
- (b) For a child from birth through two years of age with visual and/or auditory impairments, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§300.320-300.324, [~~§§300.340-300.346,~~] and the memorandum of understanding between the Texas Education Agency (TEA) and Texas Interagency Council on Early Childhood Intervention. For students three years of age and older, school districts must develop an IEP.

(c) ARD committee membership.

- (1) ARD committees shall include those persons identified in 34 CFR, §300.321(a), as follows:
 - (A) the parent(s) of the child;
 - (B) not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
 - (C) not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
 - (D) a representative of the school district who:
 - (i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (ii) is knowledgeable about the general education curriculum; and
 - (iii) is knowledgeable about the availability of resources of the school district;

- (E) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in subparagraphs (B)-(F) of this paragraph;
 - (F) at the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate; and
 - (G) whenever appropriate, the child with a disability.
- (2) The regular education teacher who serves as a member of a student's ARD committee should be a regular education teacher who is responsible for implementing a portion of the student's IEP.
 - (3) The special education teacher or special education provider that participates in the ARD committee meeting in accordance with 34 CFR, §300.321(a)(3), must be appropriately certified or licensed as required by 34 CFR, §300.18 and §300.156.
 - (4) If the student is:
 - (A) a student with a suspected or documented visual impairment, the ARD committee shall include a teacher who is certified in the education of students with visual impairments;
 - (B) a student with a suspected or documented auditory impairment, the ARD committee shall include a teacher who is certified in the education of students with auditory impairments;
or
 - (C) a student with suspected or documented deaf-blindness, the ARD committee shall include a teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students with ~~or~~ auditory impairments.
 - (5) An ARD committee member, including a member described in subsection (c)(4) of this section, is not required to attend an ARD committee meeting if the conditions of either 34 CFR, §300.321(e)(1), regarding attendance, or 34 CFR, §300.321(e)(2), regarding excusal, have been met.
- ~~(c) — At least one general education teacher of the student (if the student is, or may be, participating in the general education environment) shall participate as a member of the ARD committee. The special education teacher or special education provider that participates in the ARD committee meeting in accordance with 34 CFR, §300.344(a)(3), must be certified in the child's suspected areas of disability. When a specific certification is not required to serve certain disability categories, then the special education teacher or special education provider must be qualified to provide the educational services that the child may need. Districts should refer to §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel) to ensure that appropriate teachers and/or service providers are present and participate at each ARD committee meeting.~~
- (d) The ARD committee shall make its decisions regarding students referred for a full and individual initial evaluation within 30 calendar days from the date of the completion of the written full and individual initial evaluation report. If the 30th day falls during the summer and school is not in session, the ARD committee shall have until the first day of classes in the fall to finalize decisions concerning the initial eligibility determination, the IEP, and placement, unless the full and individual initial evaluation indicates that the student will need extended school year (ESY) services during that summer.
 - (e) The written report of the ARD committee shall document the decisions of the committee with respect to issues discussed at the meeting. The report shall include the date, names, positions, and signatures of the members participating in each meeting in accordance with 34 CFR, §§300.321, 300.322, 300.324, and 300.325. ~~[§§300.344, 300.345, 300.348, and 300.349.]~~ The report shall also indicate each member's agreement or disagreement with the committee's decisions. In the event TEC, §29.005(d)(1), applies, the district shall provide a written or audio-taped ~~[audiotaped]~~ copy of the student's IEP, as defined in 34 CFR, §300.324 ~~[§300.346]~~ and §300.320. ~~[§300.347.]~~ In the event TEC, §29.005(d)(2), applies, the district shall make a good faith effort to provide a written or audio-taped ~~[audiotaped]~~ copy of the student's IEP, as defined in 34 CFR, §300.324 ~~[§300.346]~~ and §300.320. ~~[§300.347.]~~

- (f) A school district shall comply with the following for ~~For~~ a student who is newly enrolled in ~~new to~~ a school district. ^[2]
- (1) If the student was in the process of being evaluated for special education eligibility in the student's previous school district, the student's current school district shall coordinate with the student's previous school district as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation in accordance with 34 CFR, §300.301(d)(2) and (e) and §300.304(c)(5). The evaluation shall be completed not later than the 60th calendar day following the date on which the current school district receives written consent as required by the TEC, §29.004 [within 60 calendar days from the date the student was verified as a student being evaluated for special education eligibility] .
- ~~[(1) when a student transfers within the state, the ARD committee may, but is not required to, meet when the student enrolls and a copy of the student's IEP is available, the parent(s) indicate in writing that they are satisfied with the current IEP, and the district determines that the current IEP is appropriate and can be implemented as written; or]~~
- (2) When a student transfers within the state and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the school district must meet the requirements of 34 CFR, §300.323 (a) and (e), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §300.323(e)(1) or (2), shall be 30 school days from the date the student is verified as being a student eligible for special education services.
- ~~[(2) if the conditions of subsection (f)(1) of this section are not met, then the ARD committee must meet when the student enrolls and the parents verify that the student was receiving special education services in the previous school district, or the previous school district verifies in writing or by telephone that the student was receiving special education services. At this meeting, the ARD committee must do one of the following:]~~
- ~~[(A) the ARD committee may determine that it has appropriate evaluation data and other information to develop and begin implementation of a complete IEP for the student; or]~~
- ~~[(B) the ARD committee may determine that valid evaluation data and other information from the previous school district are insufficient or unavailable to develop a complete IEP. In this event, the ARD committee may authorize the provision of temporary special education services pending receipt of valid evaluation data from the previous school district or the collection of new evaluation data by the current school district. In this situation, a second ARD committee meeting must be held within 30 school days from the date of the first ARD committee meeting to finalize or develop an IEP based on current information.]~~
- (3) When a student transfers from another state and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the school district must meet the requirements of 34 CFR, §300.323 (a) and (f), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §300.323(f)(1) and (2), shall be 30 school days from the date the student is verified as being a student eligible for special education services.
- (4) ~~[(3)]~~ In accordance with TEC, §25.002, and 34 CFR, §300.323 (g) , the school district in which the student was previously enrolled shall furnish the new school district with a copy of the student's records, including the child's special education records, not later than the 30th calendar day after the student was enrolled in the new school district. The Family Educational Rights and Privacy Act (FERPA), 20 United States Code, [U.S.C.] §1232g, does not require the student's current and previous school districts to obtain parental consent before requesting or sending the student's special education records if the disclosure is conducted in accordance with 34 CFR, §99.31(a)(2) and §99.34.

- (g) All disciplinary actions regarding students with disabilities shall be determined in accordance with 34 CFR, §§300.101(a) and 300.530-300.536 [~~§§300.121 and 300.519-300.529~~] (relating to disciplinary actions and procedures), the TEC, Chapter 37, Subchapter A (Alternative Settings for Behavior Management), and §89.1053 of this title (relating to Procedures for Use of Restraint and Time-Out).
- (h) All members of the ARD committee shall have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the committee concerning required elements of the IEP shall be made by mutual agreement of the required members if possible. The committee may agree to an annual IEP or an IEP of shorter duration.
- (1) When mutual agreement about all required elements of the IEP is not achieved, the party (the parents or adult student) who disagrees shall be offered a single opportunity to have the committee recess for a period of time not to exceed ten school days. This recess is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense which may lead to a placement in an alternative education program (AEP). The requirements of this subsection (h) do not prohibit the members of the ARD committee from recessing an ARD committee meeting for reasons other than the failure of the parents and the school district from reaching mutual agreement about all required elements of an IEP.
 - (2) During the recess the committee members shall consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons which may assist in enabling the ARD committee to reach mutual agreement.
 - (3) The date, time, and place for continuing the ARD committee meeting shall be determined by mutual agreement prior to the recess.
 - (4) If a ten-day recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the district shall implement the IEP which it has determined to be appropriate for the student.
 - (5) When mutual agreement is not reached, a written statement of the basis for the disagreement shall be included in the IEP. The members who disagree shall be offered the opportunity to write their own statements.
 - (6) When a district implements an IEP with which the parents disagree or the adult student disagrees, the district shall provide prior written notice to the parents or adult student as required in 34 CFR, §300.503.
 - (7) Parents shall have the right to file a complaint, request mediation, and ~~or~~ request a due process hearing at any point when they disagree with decisions of the ARD committee.

§89.1052. Discretionary Placements in Juvenile Justice Alternative Education Programs (JJAEP).

- (a) This section applies only to the expulsion of a student with a disability under:
- (1) Texas Education Code (TEC), §37.007(b), (c), or (f); or
 - (2) TEC, §37.007(d), as a result of conduct that contains the elements of any offense listed in TEC, §37.007(b)(2)(C), against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district.
- ~~(b) (a)~~ In a county with a JJAEP, a local school district shall invite the administrator of the JJAEP or the administrator's designee to an admission, review, and dismissal (ARD) committee meeting convened to discuss the [a student's] expulsion of a student with a disability under one of the provisions listed in subsection (a) of this section, [Texas Education Code (TEC), §37.004(e),] relating to offenses for which a school district may expel a student. The reasonable notice of the ARD committee meeting must be provided consistent with 34 Code of Federal Regulations (CFR), §300.322 [CFR, §300.345] and §300.503, and §89.1015 of this title (relating to Time Line for All Notices). ~~[, and a]~~ A copy of the student's current individualized education program (IEP) must be provided to the JJAEP administrator or designee with the notice. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means including conference

telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's placement in the JJAEP and implementation of the student's current IEP in the JJAEP.

- (c) ~~(b)~~ For a student with a disability who was expelled under one of the provisions listed in subsection (a) of this section, an ARD committee meeting must be convened to reconsider placement of the student in the JJAEP, if the JJAEP administrator or designee provides written notice to the school district of specific concerns that the student's educational or behavioral needs cannot be met in the JJAEP. ~~In accordance with TEC, §37.004(f), when the JJAEP administrator or designee provides written notice of specific concerns to the school district from which a student was expelled under one of the provisions listed in TEC, §37.004(e), relating to offenses for which a school district may expel a student, an ARD committee meeting must be convened to reconsider placement of the student in the JJAEP.~~ The reasonable notice of the ARD committee meeting must be provided consistent with 34 CFR, ~~§300.322~~ ~~§300.345~~ and §300.503, and §89.1015 of this title (relating to Time Line for All Notices). If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's continued placement in the JJAEP.

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

- (a) Requirement to implement. In addition to the requirements of 34 Code of Federal Regulations (CFR), ~~§300.324(a)(2)(i) and (c), §300.346(a)(2)(i) and (e).~~ school districts and charter schools must implement the provisions of this section regarding the use of restraint and time-out. In accordance with the provisions of Texas Education Code (TEC), §37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out), it is the policy of the state to treat with dignity and respect all students, including students with disabilities who receive special education services under TEC, Chapter 29, Subchapter A.
- (b) Definitions.
- (1) Emergency means a situation in which a student's behavior poses a threat of:
 - (A) imminent, serious physical harm to the student or others; or
 - (B) imminent, serious property destruction.
 - (2) Restraint means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body.
 - (3) Time-out means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:
 - (A) that is not locked; and
 - (B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.
- (c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section and with the following limitations.
- (1) Restraint shall be limited to the use of such reasonable force as is necessary to address the emergency.
 - (2) Restraint shall be discontinued at the point at which the emergency no longer exists.
 - (3) Restraint shall be implemented in such a way as to protect the health and safety of the student and others.
 - (4) Restraint shall not deprive the student of basic human necessities.
- (d) Training on use of restraint. Training for school employees, volunteers, or independent contractors shall be provided according to the following requirements.

- (1) A [~~Not later than April 1, 2003, a~~] core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.
 - (2) Personnel [~~After April 1, 2003, personnel~~] called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.
 - (3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.
 - (4) All trained personnel shall receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.
- (e) Documentation and notification on use of restraint. In a case in which restraint is used, school employees, volunteers, or independent contractors shall implement the following documentation requirements.
- (1) On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.
 - (2) On the day restraint is utilized, a good faith effort shall be made to verbally notify the parent(s) regarding the use of restraint.
 - (3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.
 - (4) Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the ARD committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavioral intervention plan (BIP).
 - (5) Written notification to the parent(s) and documentation to the student's special education eligibility folder shall include the following:
 - (A) name of the student;
 - (B) name of the staff member(s) administering the restraint;
 - (C) date of the restraint and the time the restraint began and ended;
 - (D) location of the restraint;
 - (E) nature of the restraint;
 - (F) a description of the activity in which the student was engaged immediately preceding the use of restraint;
 - (G) the behavior that prompted the restraint;
 - (H) the efforts made to de-escalate the situation and alternatives to restraint that were attempted; and
 - (I) information documenting parent contact and notification.
- (f) Clarification regarding restraint. The provisions adopted under this section do not apply to the use of physical force or a mechanical device which does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced in subsection (b)(2) of this section does not include:
- (1) physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;
 - (2) limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort;

- (3) limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the individualized education program (IEP) as required by 34 CFR, §300.324(a)(2)(i) and (c) [~~34 CFR §300.346(a)(2)(i) and (c)~~] to promote student learning and reduce and/or prevent the need for ongoing intervention; or
 - (4) seat belts and other safety equipment used to secure students during transportation.
- (g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(3) of this section with the following limitations.
- (1) Physical force or threat of physical force shall not be used to place a student in time-out.
 - (2) Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or BIP if it is utilized on a recurrent basis to increase or decrease a targeted behavior.
 - (3) Use of time-out shall not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.
- (h) Training on use of time-out. Training for school employees, volunteers, or independent contractors shall be provided according to the following requirements.
- (1) General [~~Not later than April 1, 2003, general~~] or special education personnel who implement time-out based on requirements established in a student's IEP and/or BIP must be trained in the use of time-out.
 - (2) Newly-identified [~~After April 1, 2003, newly identified~~] personnel called upon to implement time-out based on requirements established in a student's IEP and/or BIP must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.
 - (3) Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, and must address the impact of time-out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.
 - (4) All trained personnel shall receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.
- (i) Documentation on use of time-out. Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP or BIP. The admission, review, and dismissal (ARD) committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.
- (j) Student safety. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.
- (k) Data reporting. With [~~Beginning with the 2003-2004 school year, with~~] the exception of actions covered by subsection (f) of this section, data regarding the use of restraint must be electronically reported to the Texas Education Agency in accordance with reporting standards specified by the agency [~~Agency~~].
- (l) The provisions 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.

§89.1055. Content of the Individualized Education Program (IEP).

- (a) The individualized education program (IEP) developed by the admission, review, and dismissal (ARD) committee for each student with a disability shall comply with the requirements of 34 Code of Federal Regulations (CFR), §300.320 and §300.324 ~~;~~ ~~[§300.346 and §300.347,]~~ ~~[and Part 300, Appendix A]~~ .
- (b) The IEP must include a statement of any individual appropriate and allowable ~~[allowable]~~ accommodations in the administration of assessment instruments developed in accordance with Texas Education Code (TEC), §39.023(a)-(c), or district-wide assessments of student achievement (if the district administers such optional assessments) that are necessary to measure the academic achievement and functional performance of the child on the assessments. ~~[needed in order for the student to participate in the assessment.]~~ If the ARD committee determines that the student will not participate in a general state-wide assessment ~~[particular state-]~~ or district-wide assessment of student achievement (or part of an assessment), the IEP must include a statement of:
- (1) why the child cannot participate in the regular assessment; and
 ~~[(1) — why that assessment is not appropriate for the child; and]~~
 - (2) why the particular alternate assessment selected is appropriate for the child.
 ~~[(2) — how the child will be assessed using a locally developed alternate assessment.]~~
- (c) If the ARD committee determines that the student is in need of extended school year (ESY) services, as described in §89.1065 of this title (relating to Extended School Year Services (ESY Services)), then the IEP must also include goals and objectives for ESY services from the student's current IEP.
- (d) For students with visual impairments, from birth through 21 years of age, the IEP or individualized family services plan (IFSP) shall also meet the requirements of TEC, §30.002(e).
- (e) For students eligible under §89.1040(c)(1) of this title (relating to Eligibility Criteria) ~~[with autism-spectrum disorders (ASD)]~~ , the strategies described in paragraphs (1)-(11) of this subsection shall be considered, based on peer-reviewed ~~,~~ [and/or] research-based educational programming practices to the extent practicable ~~;~~ and , when needed, addressed in the IEP:
- (1) extended educational programming (for example: ~~[including]~~ extended day and/or extended school year services ~~;~~ that consider ~~[considers]~~ the duration of programs/settings based on assessment of behavior, social skills, communication, academics, and self-help skills ~~)~~ ;
 - (2) daily schedules reflecting minimal unstructured time and active engagement in learning activities (for example: ~~[including]~~ lunch, snack, and recess periods that provide ~~[and providing]~~ flexibility within routines ~~;~~ adapt ~~[that are adaptable]~~ to individual skill levels ~~;~~ and assist with schedule changes, such as changes involving ~~[field trips,]~~ substitute teachers ~~;~~ and pep rallies ~~)~~ ;
 - (3) in-home and community-based training or viable alternatives that assist the student with acquisition of social/behavioral skills (for example: ~~[including]~~ strategies that facilitate maintenance and generalization of such skills from home to school, school to home, home to community, and school to community ~~)~~ ;
 - (4) positive behavior support strategies based on relevant information, for example ~~[such as]~~ ;
 - (A) antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions; and
 - (B) a Behavior Intervention Plan developed from a Functional Behavioral Assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings;
 - (5) beginning at any age, consistent with subsections (g) of this section, futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments;
 - (6) parent/family training and support, provided by qualified personnel with experience in Autism Spectrum Disorders (ASD) ~~[ASD]~~ , that , for example ;

- (A) provides a family with skills necessary for a child to succeed in the home/community setting;
 - (B) includes information regarding resources (for example: [such as] parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching/management techniques related to the child's curriculum); and
 - (C) facilitates parental carryover of in-home training (for example: [and includes] strategies for behavior management and developing structured home environments and/or communication training so that parents are active participants in promoting the continuity of interventions across all settings);
- (7) suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social/behavioral progress based on the child's developmental and learning level (acquisition, fluency, maintenance, generalization) that encourages work towards individual independence as determined by ,for example :
- (A) adaptive behavior evaluation results;
 - (B) behavioral accommodation needs across settings; and
 - (C) transitions within the school day;
- (8) communication interventions, including language forms and functions that enhance effective communication across settings (for example: [-such as] augmentative, incidental, and naturalistic teaching);
- (9) social skills supports and strategies based on social skills assessment/curriculum and provided across settings (for example: [-such as] trained peer facilitators (e.g., circle of friends), video modeling, social stories, and role playing);
- (10) professional educator/staff support (for example: [-such as] training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP); and
- (11) teaching strategies based on peer reviewed , [and/or] research-based practices for students with ASD (for example: [-such as] those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, or social skills training) .
- ~~(c) For students with autism/pervasive developmental disorders, information about the following shall be considered and, when needed, addressed in the IEP:~~
- ~~(1) extended educational programming;~~
 - ~~(2) daily schedules reflecting minimal unstructured time;~~
 - ~~(3) in home training or viable alternatives;~~
 - ~~(4) prioritized behavioral objectives;~~
 - ~~(5) prevocational and vocational needs of students 12 years of age or older;~~
 - ~~(6) parent training; and~~
 - ~~(7) suitable staff to students ratio.~~
- (f) If the ARD committee determines that services are not needed in one or more of the areas specified in subsection (e)(1)-(11) ~~(e)(1)-(7)~~ of this section, the IEP must include a statement to that effect and the basis upon which the determination was made.
- (g) For ~~[In accordance with 34 CFR §300.29, §300.344, and §300.347, for]~~ each student with a disability, beginning at age 16 ~~[14]~~ (prior to the date on which a student turns 16 ~~[14]~~ years of age) or younger, if determined appropriate by the ARD committee, the following issues must be considered in the development of the IEP, and, if appropriate, integrated into the IEP:
- (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.

§89.1056. Transfer of Assistive Technology Devices.

- (a) Unless otherwise specifically defined in this section, the terms used in this section shall have the meanings ascribed to such terms in Texas Education Code (TEC), §30.0015, (Transfer of Assistive Technology Devices).
- (b) A transfer of an assistive technology device (ATD) pursuant to TEC, §30.0015, shall be in accordance with a transfer agreement which incorporates the standards described in TEC, §30.0015(c), and which includes, specifically, the following.
 - (1) The transferor and transferee must represent and agree that the terms of the transfer are based on the fair market value of the ATD, determined in accordance with generally accepted accounting principles.
 - (2) The informed consent of the parent of the student with a disability for whom the ATD is being transferred must be obtained before the transfer of an ATD pursuant to TEC, §30.0015. The procedures employed by a school district in obtaining such informed consent shall be consistent with the procedures employed by the district to obtain parental consent under 34 Code of Federal Regulations (CFR), §300.300. [~~§300.505.~~] If the student has the legal capacity to enter into a contract, the informed consent may be obtained from the student. Consistent with 34 CFR, §300.505(c), informed parental or adult student consent need not be obtained if the school district can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent or the adult student has failed to respond. To meet the reasonable measures requirement, the school district must use procedures consistent with those described in 34 CFR, §300.322(d). [~~§300.345(d).~~]
 - (3) If the transfer is a sale, then the sale of the ATD shall be evidenced by a "Uniform Transfer Agreement" (UTA) which includes the following:
 - (A) the names of the transferor and the transferee (which may be any individual or entity identified in TEC, §30.0015(b));
 - (B) the date of the transfer;
 - (C) a description of the ATD being transferred;
 - (D) the terms of the transfer (including the transfer of warranties, to the extent applicable); and
 - (E) the signatures of authorized representatives of both the transferor and the transferee.
- (c) The Texas Education Agency shall annually disseminate to school districts the standards for a school district's transfer of an ATD pursuant to TEC, §30.0015.

- (d) Nothing in this section or in TEC, §30.0015, shall:
- (1) alter any existing obligation under federal or state law to provide ATDs to students with disabilities;
 - (2) require a school district to transfer an ATD to any person or entity;
 - (3) limit a school district's right to sell, lease, loan, or otherwise convey or dispose of property as authorized by federal or state laws, rules, or regulations; or
 - (4) authorize any transfer of an ATD that is inconsistent with any restriction on transferability imposed by the manufacturer or developer of the ATD or applicable federal or state laws, rules, or regulations.

§89.1060. Definitions of Certain Related Services.

~~[In addition to the specific related services defined in 34 Code of Federal Regulations (CFR), §300.24, related services include interpreting services for students who are deaf. Interpreting services include interpreting/transliterating receptively and expressively for persons who are deaf or hard of hearing.]~~

§89.1065. Extended School Year Services (ESY Services).

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

- (1) The need for ESY services must be determined on an individual student basis by the admission, review, and dismissal (ARD) committee in accordance with 34 Code of Federal Regulations (CFR), §300.106, ~~§300.309,~~ and the provisions of this section. In determining the need for and in providing ESY services, a school district may not:
 - (A) limit ESY services to particular categories of disability; or
 - (B) unilaterally limit the type, amount, or duration of ESY services.
- (2) The need for ESY services must be documented from formal and/or informal evaluations provided by the district or the parents. The documentation shall demonstrate that in one or more critical areas addressed in the current individualized education program (IEP) objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time. Severe or substantial regression means that the student has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESY services.
- (3) The reasonable period of time for recoupment of acquired critical skills shall be determined on the basis of needs identified in each student's IEP. If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results, or reasonably may be expected to result, in immediate physical harm to the student or to others, ESY services may be justified without consideration of the period of time for recoupment of such skills. In any case, the period of time for recoupment shall not exceed eight weeks.
- (4) A skill is critical when the loss of that skill results, or is reasonably expected to result, in any of the following occurrences during the first eight weeks of the next regular school year:
 - (A) placement in a more restrictive instructional arrangement;
 - (B) significant loss of acquired skills necessary for the student to appropriately progress in the general curriculum;
 - (C) significant loss of self-sufficiency in self-help skill areas as evidenced by an increase in the number of direct service staff and/or amount of time required to provide special education or related services;
 - (D) loss of access to community-based independent living skills instruction or an independent living environment provided by noneducational sources as a result of regression in skills; or

- (E) Loss of access to on-the-job training or productive employment as a result of regression in skills.
- (5) If the district does not propose ESY services for discussion at the annual review of a student's IEP, the parent may request that the ARD committee discuss ESY services pursuant to 34 CFR, §300.321. [~~§300.344.~~]
- (6) If a student for whom ESY services were considered and rejected loses critical skills because of the decision not to provide ESY services, and if those skills are not regained after the reasonable period of time for recoupment, the ARD committee shall reconsider the current IEP if the student's loss of critical skills interferes with the implementation of the student's IEP.
- (7) For students enrolling in a district during the school year, information obtained from the prior school district as well as information collected during the current year may be used to determine the need for ESY services.
- (8) The provision of ESY services is limited to the educational needs of the student and shall not supplant or limit the responsibility of other public agencies to continue to provide care and treatment services pursuant to policy or practice, even when those services are similar to, or the same as, the services addressed in the student's IEP. No student shall be denied ESY services because the student receives care and treatment services under the auspices of other agencies.
- (9) Districts are not eligible for reimbursement for ESY services provided to students for reasons other than those set forth in this section.

§89.1070. Graduation Requirements.

- (a) Graduation with a regular high school diploma under subsection (b) or (d) of this section terminates a student's eligibility for special education services under this subchapter and Part B of the Individuals with Disabilities Education Act (IDEA), 20 United States Code, §§1400 et seq. In addition, as provided in Texas Education Code (TEC), §42.003(a), graduation with a regular high school diploma under subsection (b) or (d) of this section terminates a student's entitlement to the benefits of the Foundation School Program.
- (b) A student receiving special education services may graduate and be awarded a regular high school diploma if:
 - (1) the student has satisfactorily completed the state's or district's (whichever is greater) minimum curriculum and credit requirements for graduation (under the recommended or distinguished achievement high school programs in Chapter 74 of this title (relating to Curriculum Requirements)) applicable to students in general education, including satisfactory performance on the exit level assessment instrument; or
 - (2) the student has satisfactorily completed the state's or district's (whichever is greater) minimum curriculum and credit requirements for graduation (under the minimum high school program in Chapter 74 of this title) applicable to students in general education, including participation in required state assessments. The [satisfactory performance on an alternate assessment instrument as determined by the] student's admission, review, and dismissal (ARD) committee shall determine whether satisfactory performance on a required state assessment shall also be required for graduation . [and has been exempted from the exit level assessment instrument under TEC, §39.027(a)(2)(B).]
- (c) A student receiving special education services may also graduate and receive a regular high school diploma when the student's ARD [admission, review, and dismissal (ARD)] committee has determined that the student has successfully completed:
 - (1) the student's individualized education program (IEP);
 - (2) ~~(1)~~ [~~the student's individualized education program (IEP) and met~~] one of the following conditions, consistent with the student's IEP :

- (A) full-time employment, based on the student's abilities and local employment opportunities, in addition to sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district;
 - (B) demonstrated mastery of specific employability skills and self-help skills which do not require direct ongoing educational support of the local school district; or
 - (C) access to services which are not within the legal responsibility of public education, or employment or educational options for which the student has been prepared by the academic program;
- (3) ~~(2)~~ the state's or district's (whichever is greater) minimum credit requirements for students without disabilities; and
- (4) ~~(3)~~ the state's or district's minimum curriculum requirements to the extent possible with modifications/substitutions only when it is determined necessary by the ARD committee for the student to receive an appropriate education.
- (d) A student receiving special education services may also graduate and receive a regular high school diploma upon the ARD committee determining that the student no longer meets age eligibility requirements and has completed the requirements specified in the IEP.
- (e) All students graduating under this section shall be provided with a summary of academic achievement and functional performance as described in 34 Code of Federal Regulations (CFR), §300.305(e)(3). This summary shall consider, as appropriate, the views of the parent and student and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals. An evaluation as required by 34 CFR, §300.305(e)(1), shall be included as part of the summary for a student graduating under subsection (c) of this section.
- ~~[(e) When considering a student's graduation under subsection (e) of this section, the student shall be evaluated prior to graduation as required by 34 CFR, §300.534(e), and the ARD committee shall consider the evaluation, the views of the parent and/or student as appropriate, and, when appropriate, seek in writing and consider written recommendations from adult service agencies.]~~
- (f) Students who participate in graduation ceremonies but who are not graduating under subsection (c) of this section and who will remain in school to complete their education do not have to be evaluated in accordance with subsection (e) of this section.
- (g) Employability and self-help skills referenced under subsection (c) of this section are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.
- ~~[(h) Students with disabilities who are eligible to take the exit level assessment instrument but have not performed satisfactorily are eligible for instruction in accordance with the TEC, §39.024.]~~
- (h) ~~(g)~~ For students who receive a diploma according to subsection (c) of this section, the ARD committee shall determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.

§89.1075. General Program Requirements and Local District Procedures.

- (a) Each school district shall maintain an eligibility folder for each student receiving special education services, in addition to the student's cumulative record. The eligibility folder must include, but need not be limited to: copies of referral data; documentation of notices and consents; evaluation reports and supporting data; admission, review, and dismissal (ARD) committee reports; and the student's individualized education programs (IEPs).
- (b) For school districts providing special education services to students with visual impairments, there shall be written procedures as required in the Texas Education Code (TEC), §30.002(c)(10).
- (c) Each school district shall have procedures to ensure that each teacher involved in a student's instruction has the opportunity to provide input and request assistance regarding the implementation of the student's IEP.

These procedures must include a method for a student's regular or special education teachers to submit requests for further consideration of the student's IEP or its implementation. In response to this request, the district's procedures shall include a method for the district to determine whether further consideration is necessary and whether this consideration will be informal or will require an ARD committee meeting. If the district determines that an ARD committee meeting is necessary, the student's current regular and special education teachers shall have an opportunity to provide input. The school district shall also ensure that each teacher who provides instruction to a student with disabilities receives relevant sections of the student's current IEP and that each teacher be informed of specific responsibilities related to implementing the IEP, such as goals and benchmarks, and of needed accommodations, modifications, and supports for the child.

- (d) Students with disabilities shall have available an instructional day commensurate with that of students without disabilities. The ARD committee shall determine the appropriate instructional setting and length of day for each student, and these shall be specified in the student's IEP.
- (e) School districts that jointly operate their special education programs as a shared services arrangement, in accordance with TEC, §29.007, shall do so in accordance with procedures developed by the Texas Education Agency (TEA).
- (f) School districts that contract for services from non-public day schools shall do so in accordance with 34 Code of Federal Regulations, §300.147, ~~§300.402~~, and procedures developed by the TEA.

§89.1076. Interventions and Sanctions.

The Texas Education Agency (TEA) shall establish and implement a system of interventions and sanctions, in accordance with the Individuals with Disabilities Education Act, 20 United States Code, [USC] §§1400 et seq., Texas Education Code (TEC), §29.010, and TEC, Chapter 39, as necessary to ensure program effectiveness and compliance with federal and state requirements regarding the implementation of special education and related services. In accordance with TEC, §39.131(a), the TEA may combine any intervention and sanction. The system of interventions and sanctions will include, but not be limited to, the following:

- (1) on-site review for failure to meet program or compliance requirements;
- (2) required fiscal audit of specific program(s) and/or of the district, paid for by the district;
- (3) required submission of corrective action(s), including compensatory services, paid for by the district;
- (4) required technical assistance ~~[from the education service center]~~, paid for by the district;
- (5) public release of program or compliance review findings;
- (6) special investigation and/or follow-up verification visits;
- (7) required public hearing conducted by the local school board of trustees;
- (8) assignment of a special purpose monitor, conservator, or management team, paid for by the district;
- (9) hearing before the commissioner of education or designee;
- (10) reduction in payment or withholding of funds; ~~[and/or]~~
- (11) lowering of the special education monitoring/compliance ~~[compliance]~~ status and/or the accreditation rating of the district ; ~~and/or~~ []
- (12) other authorized interventions and sanctions as determined by the commissioner.

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

- (a) A student's admission, review, and dismissal (ARD) committee may place the student at the Texas School for the Blind and Visually Impaired (TSBVI) or the Texas School for the Deaf (TSD) in accordance with

the provisions of 34 Code of Federal Regulations (CFR), Part 300, the Texas Education Code (TEC), including, specifically, §§30.021, 30.051, and 30.057, and the applicable rules of this subchapter.

- (b) In the event that a student is placed by his or her ARD committee at either the TSBVI or the TSD, the student's "resident school district," as defined in subsection (e) of this section, shall be responsible for assuring that a free appropriate public education (FAPE) is provided to the student at the TSBVI or the TSD, as applicable, in accordance with the Individuals with Disabilities Education Act (IDEA), 20 United States Code (USC), §§1400 et seq., 34 CFR, Part 300, state statutes, and rules of the State Board of Education (SBOE) and the commissioner of education. If representatives of the resident school district and representatives of the TSBVI or the TSD disagree, as members of a student's ARD committee, with respect to a recommendation by one or more members of the student's ARD committee that the student be evaluated for placement, initially placed, or continued to be placed at the TSBVI or TSD, as applicable, the representatives of the resident school district and the TSBVI or TSD, as applicable, may seek resolution through the mediation procedures adopted by the Texas Education Agency or through any due process hearing to which the resident school district or the TSBVI or the TSD are entitled under the IDEA, 20 USC, §§1400, ~~§§1401~~ et seq.
- (c) When a student's ARD committee places the student at the TSBVI or the TSD, the student's resident school district shall comply with the following requirements.
- (1) For each student, the resident school district shall list those services in the student's individualized education program (IEP) ~~[which the district cannot appropriately provide in a local program and]~~ which the TSBVI or the TSD can appropriately provide.
 - (2) The district may make an on-site visit to verify that the TSBVI or the TSD can and will offer the services listed in the individual student's IEP and to ensure that the school offers an appropriate educational program for the student.
 - (3) For each student, the resident school district shall include in the student's IEP the criteria and estimated time lines for returning the student to the resident school district.
- (d) In addition to the provisions of subsections (a)-(c) of this section, and as provided in TEC, §30.057, the TSD shall provide services in accordance with TEC, §30.051, to any eligible student with a disability for whom the TSD is an appropriate placement if the student has been referred for admission by the student's parent or legal guardian, a person with legal authority to act in place of the parent or legal guardian, or the student, if the student is age 18 or older, at any time during the school year if the referring person chooses the TSD as the appropriate placement for the student rather than placement in the student's resident school district or regional program determined by the student's ARD committee. For students placed at the TSD pursuant to this subsection, the TSD shall be responsible for assuring that a FAPE is provided to the student at the TSD, in accordance with IDEA, 20 USC, §§1400, ~~§§1401~~ et seq., 34 CFR, Part 300, state statutes, and rules of the SBOE and the commissioner of education.
- (e) For purposes of this section and §89.1090 of this title (relating to Transportation of Students Placed in a Residential Setting, Including the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf), the "resident school district" is the school district in which the student would be enrolled under TEC, §25.001, if the student were not placed at the TSBVI or the TSD.

§89.1090. Transportation of Students Placed in a Residential Setting, Including the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf.

For each student placed in a residential setting by the student's admission, review, and dismissal (ARD) committee, including those students placed in the Texas School for the Blind and Visually Impaired ~~[TSBVI]~~ and the Texas School for the Deaf ~~[TSD]~~, the resident school district shall be responsible for transportation at the beginning and end of the term and for regularly scheduled school holidays when students are expected to leave the residential campus. The resident school district is not responsible for transportation costs for students placed in residential settings by their parents. Transportation costs shall not exceed state approved per diem and mileage rates unless excess costs can be justified and documented. Transportation shall be arranged using the most cost efficient means. When it is necessary for the safety of the student, as determined by the ARD committee, for an adult designated by the ARD committee to accompany the student, round-trip transportation for that adult shall also be provided. The resident school

district and the residential facility shall coordinate to ensure that students are transported safely, including the periods of departure and arrival.

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

- (a) Except as specifically provided in this section, in accordance with 34 Code of Federal Regulations (CFR), §300.137, [~~§300.454,~~] no eligible student who has been placed by his or her parent(s) in a private school or facility [~~or facility~~] has an individual right to receive some or all of the special education and related services that the student would receive if he or she were enrolled in a public school district. Except as specifically set forth in this section, a school district's obligations with respect to students placed by their parents in private schools are governed by 34 CFR, §§300.130-300.144. [~~§§300.450-300.462.~~]
- (1) For purposes of **subsections (a) and (d)** of this section only, private school is defined as a private elementary or secondary school, including any pre-school, [~~day care,~~] religious school, and institutional day or residential school, that:
- (A) as required by 34 CFR, §300.13 and §300.130, is a nonprofit entity that meets the definition of nonprofit in 34 CFR, §77.1; and
- (B) provides elementary or secondary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and formal review and documentation of student progress.
- (2) A home school must meet the requirements of paragraph (1)(B) of this subsection, but not paragraph (1)(A) of this subsection, to be considered a private school for purposes of **subsections (a) and (d)** of this section.
- (b) When a student with a disability who has been placed by his or her parents directly in a private school or facility [~~or facility~~] is referred to the local school district, the local district shall convene an admission, review, and dismissal (ARD) committee meeting to determine whether the district can offer the student a free appropriate public education (FAPE). If the district determines that it can offer a FAPE to the student, the district is not responsible for providing educational services to the student, except as provided in 34 CFR, §§300.130-300.144, [~~§§300.450-300.462~~] or subsection (e) [~~(d)~~] of this section, until such time as the parents choose to enroll the student in public school full time [~~full-time~~] .
- (c) Parents of an eligible student ages 3 or 4 shall have the right to "dual enroll" their student in both the public school and the private school beginning on the student's third birthday and continuing until the end of the school year in which the student turns five or until the student is eligible to attend a district's public school kindergarten program, whichever comes first, subject to paragraphs (1)-(3) of this subsection. The public school district where a student resides is responsible for providing special education and related services to a student whose parents choose dual enrollment. [~~the following:~~
- (1) The student's ARD committee shall develop an individualized education program (IEP) designed to provide the student with a FAPE in the least restrictive environment appropriate for the student.
- (2) From the IEP, the parent and the district shall determine which special education and/or related services will be provided to the student and the location where those services will be provided, based on the requirements concerning placement in the least restrictive environment set forth in 34 CFR, §§300.114-300.120, [~~§§300.550-300.553,~~] and the policies and procedures of the district.
- (3) For students served under the provisions of this subsection, the school district shall be responsible for the employment and supervision of the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided shall be consistent with those provided for students enrolled only in the public school and shall remain the property of the school district.
- (d) Parents of an eligible student ages 3 or 4 who decline dual enrollment for their student may request a services plan as described in 34 CFR, §§300.130-300.144. The public school district where the private school is located is responsible for the development of a services plan, if the student is designated to receive services under 34 CFR, §300.132.

- (e) ~~(d)~~ The school district shall provide special transportation with federal funds only when the ARD committee determines that the condition of the student warrants the service in order for the student to receive the special education and related services (if any) set forth in the IEP.
- (f) ~~(e)~~ Complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (c) of this section may be filed with the Texas Education Agency under the procedures in 34 CFR, §§300.151-300.153. Additionally, parents may request mediation as outlined in 34 CFR, § 300.506. [~~§§300.660-300.662~~] The procedures in 34 CFR, §§300.300, 300.504, 300.507, 300.508, and 300.510-300.518 [~~§§300.504-300.515~~] (relating to due process hearings) do not apply to complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (c).

Division 4. Special Education Funding

§89.1125. Allowable Expenditures of State Special Education Funds.

- (a) Persons paid from special education funds shall be assigned to instructional or other duties in the special education program and/or to provide support services to the regular education program in order for students with disabilities to be included in the regular program. Support services shall include, but not be limited to, collaborative planning, co-teaching, small group instruction with special and regular education students, direct instruction to special education students, or other support services determined necessary by the admission, review, and dismissal (ARD) committee for an appropriate program for the student with disabilities. Assignments may include duties supportive to school operations equivalent to those assigned to regular education personnel.
- (b) Personnel assigned to provide support services to the regular education program as stated in subsection (a) of this section may be fully funded from special education funds.
- (c) If personnel are assigned to special education on less than a full-time basis, except as stated in subsection (a) of this section, only that portion of time for which the personnel are assigned to students with disabilities shall be paid from state special education funds.
- (d) State special education funds may be used for special materials, supplies, and equipment which are directly related to the development and implementation of individualized education programs (IEPs) of students and which are not ordinarily purchased for the regular classroom. Office and routine classroom supplies are not allowable. Special equipment may include instructional and assistive technology devices, audiovisual equipment, computers for instruction or assessment purposes, and assessment equipment only if used directly with students.
- (e) State special education funds may be used to contract with consultants to provide staff development, program planning and evaluation, instructional services, assessments, and related services to students with disabilities.
- (f) State special education funds may be used for transportation only to and from residential placements. Prior to using federal funds for transportation costs to and from a residential facility, a district must use state or local funds based on actual expenses up to the state transportation maximum for private transportation contracts.
- (g) State special education funds may be used to pay staff travel to perform services directly related to the education of eligible students with disabilities. Funds may also be used to pay travel of staff (including administrators, general education teachers, and special education teachers and service providers) to attend staff development meetings for the purpose of improving performance in assigned positions directly related to the education of eligible students with disabilities. In no event shall the purpose for attending such staff development meetings include time spent in performing functions relating to the operation of professional organizations. Funds [~~In accordance with 34 Code of Federal Regulations, §300.382(j), funds~~] may also be used to pay for the joint training of parents and special education, related services, and general education personnel.

Division 5. Special Education and Related Service Personnel

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

- (a) All special education and related service personnel shall be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 Code of Federal Regulations (CFR), §300.156; [~~§300.23 and §300.136;~~] the Texas Education Code (TEC), §§21.002, 21.003, and 29.304; or appropriate state agency credentials.
- (b) A teacher who holds a special education certificate or an endorsement may be assigned to any level of a basic special education instructional program serving eligible students 3-21 years of age, as defined in §89.1035(a) of this title (relating to Age Ranges for Student Eligibility), in accordance with the limitation of their certification, except for the following.
 - (1) Persons assigned to provide speech therapy instructional services must hold a valid Texas Education Agency (TEA) certificate in speech and hearing therapy or speech and language therapy, or a valid state license as a speech/language pathologist.
 - (2) Teachers holding only a special education endorsement for early childhood education for children with disabilities shall be assigned only to programs serving infants through Grade 6.
 - ~~[(3) Teachers assigned full time to teaching students who are orthopedically impaired or other health-impaired with the teaching station in the home or a hospital shall not be required to hold a special education certificate or endorsement as long as the personnel file contains an official transcript indicating that the teacher has completed a three-semester-hour survey course in the education of students with disabilities and three-semester hours directly related to teaching students with physical impairments or other health impairments.]~~
 - (3) ~~[(4)]~~ Teachers certified in the education of students with visual impairments must be available to students with visual impairments, including deaf-blindness, through one of the school district's instructional options, a shared services arrangement with other school districts, or an education service center (ESC). ~~[A teacher who is certified in the education of students with visual impairments must attend each admission, review, and dismissal (ARD) committee meeting or individualized family service plan (IFSP) meeting of a student with a visual impairment, including deaf-blindness.]~~
 - (4) ~~[(5)]~~ Teachers certified in the education of students with auditory impairments must be available to students with auditory impairments, including deaf-blindness, through one of the school district's instructional options, a regional day school program for the deaf, or a shared services arrangement with other school districts. ~~[, or an ESC. A teacher who is certified in the education of students with auditory impairments must attend each ARD committee meeting or IFSP meeting of a student with an auditory impairment, including deaf-blindness.]~~
 - (5) ~~[(6)]~~ The following provisions apply to physical education.
 - (A) When the ARD committee has made the determination and the arrangements are specified in the student's individualized education program (IEP), physical education may be provided by the following personnel:
 - (i) special education instructional or related service personnel who have the necessary skills and knowledge;
 - (ii) physical education teachers;
 - (iii) occupational therapists;
 - (iv) physical therapists; or
 - (v) occupational therapy assistants or physical therapy assistants working under supervision in accordance with the standards of their profession.
 - (B) When these services are provided by special education personnel, the district must document that they have the necessary skills and knowledge. Documentation may include, but need not be limited to, inservice records, evidence of attendance at seminars or workshops, or transcripts of college courses.

- (6) ~~(7)~~ Teachers assigned full-time or part-time to instruction of students from birth through age two with visual impairments, including deaf-blindness, shall be certified in the education of students with visual impairments. Teachers assigned full-time or part-time to instruction of students from birth through age two who are deaf, including deaf-blindness, shall be certified in education for students who are deaf and severely hard of hearing. ~~[Other certifications for serving these students shall require prior approval from TEA.]~~
- (7) ~~(8)~~ Teachers with secondary certification with the generic delivery system may be assigned to teach Grades 6-12 only.
- (c) Paraprofessional personnel must be certified and may be assigned to work with eligible students, general and special education teachers, and related service personnel. Aides may also be assigned to assist students with special education transportation, serve as a job coach, or serve in support of community-based instruction. Aides paid from state administrative funds may be assigned to the Special Education Resource System (SERS), the Special Education Management System (SEMS), or other special education clerical or administrative duties.
- (d) Interpreting services for students who are deaf shall be provided by an interpreter who is certified in the appropriate language mode(s), if certification in such mode(s) is available. If certification is available, the interpreter must be a certified member of or certified by the Registry of Interpreters for the Deaf (RID) or the Texas Board for Evaluation of Interpreters (BEI), Department of Assistive and Rehabilitative Services (DARS), Office for Deaf and Hard of Hearing Services (DHHS). ~~[Texas Commission for the Deaf and Hard of Hearing, unless the interpreter has been granted an emergency permit by the commissioner of education to provide interpreting services for students who are deaf. The commissioner shall consider applications for the issuance of an emergency permit to provide interpreting services for students who are deaf on a case by case basis in accordance with requirements set forth in 34 CFR, §300.136, and standards and procedures established by the TEA. In no event will an emergency permit allow an uncertified interpreter to provide interpreting services for more than a total of three school years to students who are deaf.]~~
- (e) Orientation and mobility instruction must be provided by a certified orientation and mobility specialist (COMS) who is certified by the Academy for Certification of Vision Rehabilitation and Education Professionals.

Division 6. Regional Education Service Center Special Education Programs

§89.1141. Education Service Center Regional Special Education Leadership.

- (a) Each regional education service center (ESC) will provide leadership, training, and technical assistance in the area of special education for students with disabilities in accordance with the Texas Education Agency's (TEA) focus on increasing student achievement and Texas Education Code (TEC), §8.051(d)(2) and (5), and will assist TEA in the implementation of 34 Code of Federal Regulations (CFR) §300.119. ~~[§300.382 and §300.555.]~~
- (b) Each regional ESC will provide technical assistance, support, and training in the area of special education to school districts based on the results of a comprehensive needs assessment process. Each regional ESC will continue to serve as first point of contact for school districts, parents, and other community stakeholders, and will ~~[in accordance with 34 CFR §300.382(j).]~~ provide for the joint training of parents and special education, related services, and general education personnel.
- (c) Regional ESC activities and responsibilities will be in accordance with current instructions, program guidelines, and program descriptions included in the ESC Performance Contract and Application, which will be made accessible to the public through the TEA website.
- (d) The ESC must utilize available TEA funding to implement activities and address needs identified under subsections (a)-(c) of this section. If additional funding is needed to implement supplementary or enhanced activities identified through the regional needs assessment process, ESCs may access and utilize alternate sources of funding. Any charges must be determined only after priorities have been established through input from affected school districts, including data collected from parents and communities through partnerships with school districts.

- (e) When an ESC provides leadership, training, and support pertaining to education and related services for students with visual impairments, directly or through contract, the personnel providing such services must be appropriately certified as identified in current program guidelines included in the ESC Performance Contract and Application, regardless of the fund source used to fund the service/personnel.
- (f) Regional ESCs may serve as fiscal agent for shared services arrangements in accordance with procedures established under §89.1075(e) of this title (relating to General Program Requirements and Local District Procedures).
- (g) For the purposes of this subchapter, ESCs shall be considered to be educational service agencies as defined in federal regulations.

Division 7. Resolution of Disputes Between Parents and School Districts

§89.1150. General Provisions.

- (a) From time to time, disputes may arise between a parent and a school district relating to the identification, evaluation, or educational placement of or the provision of a free appropriate public education (FAPE), to a student with a disability.
- (b) It is the policy and intent of the Texas Education Agency (TEA) to encourage and support the resolution of any dispute described in subsection (a) of this section at the lowest level possible and in a prompt, efficient, and effective manner.
- (c) The possible options for resolving disputes include, but are not limited to:
 - (1) meetings of the student's admission, review, and dismissal committee;
 - (2) meetings or conferences with the student's teachers;
 - (3) meetings or conferences, subject to local school district policies, with campus administrator(s), the special education director of the district (or the shared services arrangement to which the district may be a party), the superintendent of the district, or the board of trustees of the district;
 - (4) requesting mediation through the TEA in accordance with the Individuals with Disabilities Education Act (IDEA), 20 United States Code (USC), §1415(e), and 34 Code of Federal Regulations (CFR), §300.506;
 - (5) filing a complaint with the TEA in accordance with 34 CFR, §300.153; [~~§§300.600-300.662~~]; or
 - (6) requesting a due process hearing through the TEA in accordance with IDEA, 20 USC, §1415(f), and 34 CFR, §§300.507-300.514. Upon the filing of a request for a due process hearing, the parent and the school district shall also be provided with an opportunity to resolve the dispute through the mediation process established by TEA.

§89.1151. Due Process Hearings.

- (a) A parent or public education agency may initiate a due process hearing as provided in the Individuals with Disabilities Education Act (IDEA), Part B, as amended, 20 United States Code (USC), §§1401 et seq., and the applicable federal regulations, 34 Code of Federal Regulations (CFR), §§300.1 et seq.
- (b) The Texas Education (TEA) shall implement a one-tier system of due process hearings under the IDEA. The proceedings in due process hearings shall be governed by the provisions of 34 CFR, §§300.507-300.514, and 34 CFR, §300.532, [~~§300.528~~], if applicable, and §§89.1151, 89.1165, 89.1170, 89.1180, 89.1185 and 89.1191 of this subchapter.
- (c) A [~~Effective with requests for due process hearings filed on or after August 1, 2002, a~~] parent or public education agency must request a due process hearing within one year of the date the complainant knew or should have known about the alleged action that serves as the basis for the hearing request.

§89.1165. Request for Hearing.

- (a) A request for a due process hearing (due process complaint) must be in writing and must be filed with the Texas Education Agency, 1701 N. Congress Avenue, Austin, Texas 78701. The request for a due process hearing may be filed by mail, hand-delivery, or facsimile. The Individuals with Disabilities Education Act (IDEA) timelines applicable to due process hearings shall commence when the non-filing party first receives the request for a due process hearing. Unless rebutted, it will be presumed that the non-filing party first received the hearing request on the date it is sent to the parties by [and shall be deemed filed only when actually received by the office responsible for legal services at] the Texas Education Agency (TEA). The TEA has developed a model form which may be used by a parent to initiate a due process hearing. The form is available on request from TEA, all regional education service centers, and all school districts. The form is also available on TEA's website.
- (b) The party filing a request for a due process hearing must provide a copy of the request to the other party.
- ~~(b) If the request for a due process hearing does not specify the issues to be heard and the relief requested, the hearing officer shall require the complaining party to supplement the request, orally or in writing, to clarify the issues to be heard at the hearing and the relief sought by the complaining party.]~~
- (c) The request for due process hearing must include:
- (1) the name of the child;
 - (2) the address of the residence of the child;
 - (3) the name of the school the child is attending;
 - (4) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Assistance Act (42 United States Code §11434a(2)), available contact information for the child, and the name of the school the child is attending;
 - (5) a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
 - (6) a proposed resolution of the problem to the extent known and available to the party at the time.
- (d) A party may not have a due process hearing until the party, or the attorney representing the party, files a request for a due process hearing that meets the requirements of paragraph (c) of this section.

§89.1180. Prehearing Procedures.

- (a) Promptly upon being assigned to a hearing, the hearing officer will forward to the parties a scheduling order which sets the time, date, and location of the hearing and contains the timelines for the following actions, as applicable: [schedule a prehearing conference to be held at a time reasonably convenient to the parties to the hearing. The prehearing conference shall be held by telephone unless the hearing officer determines that circumstances require an in-person conference.]
- (1) Response to Complaint (34 Code of Federal Regulations (CFR), §300.508(f));
 - (2) Resolution Meeting (34 CFR, §300.510(a));
 - (3) Contesting Sufficiency of the Complaint (34 CFR, §300.508(d));
 - (4) Resolution Period (34 CFR, §300.510(b));
 - (5) Five-Business Day Disclosure (34 CFR, §300.512 (a)(3)); and
 - (6) the date by which the final decision of the hearing officer shall be issued (34 CFR, §300.515 and §300.532(c)(2)).
- (b) The hearing officer shall schedule a prehearing conference to be held at a time reasonably convenient to the parties to the hearing. The prehearing conference shall be held by telephone unless the hearing officer determines that circumstances require an in-person conference.
- ~~(b) The hearing officer shall ensure that a written, or, at the option of either party, an electronic, verbatim record of the prehearing conference is made.]~~

- (c) The prehearing shall be recorded and transcribed by a reporter, who shall immediately prepare a transcript of the prehearing for the hearing officer with copies to each of the parties.
- (d) ~~(e)~~ The purpose of the prehearing conference shall be to consider any of the following:
- (1) specifying ~~and simplifying~~ issues as set forth in the due process complaint notice ;
 - (2) admitting certain assertions of fact or stipulations;
 - (3) establishing any limitation of the number of witnesses and the time allotted for presenting each party's case; and/or
 - (4) discussing other matters which may aid in simplifying the proceeding or disposing of matters in controversy, including settling matters in dispute.
- (e) ~~(f)~~ Promptly upon the conclusion of the prehearing conference, the hearing officer will issue and deliver to the parties, or their legal representatives, a written prehearing order which confirms and/or identifies:
- (1) the time, place, and date of the hearing;
 - (2) the issues to be adjudicated ~~resolved~~ at the hearing;
 - (3) the relief being sought at the hearing;
 - (4) the deadline for disclosure of evidence and identification of witnesses, which must be at least five business days prior to the scheduled date of the hearing (hereinafter referred to as the "Disclosure Deadline");
 - (5) the date by which the final decision of the hearing officer shall be issued; and
 - (6) other information determined to be relevant by the hearing officer.
- (f) ~~(e)~~ No pleadings, other than the request for hearing, and Response to Complaint, if applicable, are mandatory, unless ordered by the hearing officer. Any pleadings after the request for a due process hearing shall be filed with the hearing officer. Copies of all pleadings shall be sent to all parties of record in the hearing and to the hearing officer. If a party is represented by an attorney, all copies shall be sent to the attorney of record. Telephone facsimile copies may be substituted for copies sent by other means. An affirmative statement that a copy of the pleading has been sent to all parties and the hearing officer is sufficient to indicate compliance with this rule.
- (g) ~~(f)~~ Discovery methods shall be limited to those specified in the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and may be further limited by order of the hearing officer. Upon a party's request to the hearing officer, the hearing officer may issue subpoenas and commissions to take depositions under the APA. Subpoenas and commissions to take depositions shall be issued in the name of the Texas Education Agency.
- (h) ~~(g)~~ On or before the Disclosure Deadline (which must be at least five business days prior to a scheduled due process hearing), each party must disclose and provide to all other parties and the hearing officer copies of all evidence (including, without limitation, all evaluations completed by that date and recommendations based on those evaluations) which the party intends to use at the hearing. An index of the documents disclosed must be included with and accompany the documents. Each party must also include with the documents disclosed a list of all witnesses (including their names, addresses, phone numbers, and professions) which the party anticipates calling to testify at the hearing.
- ~~(h) — A party may request a dismissal or nonsuit of a due process hearing to the same extent that a plaintiff may dismiss or nonsuit a case under Texas Rules of Civil Procedure, Rule 162. However, if a party requests a dismissal or nonsuit of a due process hearing after the Disclosure Deadline has passed and, at any time within one year thereafter requests a subsequent due process hearing involving the same or substantially similar issues as those alleged in the hearing which was dismissed or nonsuited, then, absent good cause or unless the parties agree otherwise, the Disclosure Deadline for the subsequent due process hearing shall be the same date as was established for the hearing that was dismissed or nonsuited.]~~
- (i) A party may request a dismissal or nonsuit of a due process hearing to the same extent that a plaintiff may dismiss or nonsuit a case under Texas Rules of Civil Procedure, Rule 162. However, if a party requests a

dismissal or nonsuit of a due process hearing after the Disclosure Deadline has passed and, at any time within one year thereafter requests a subsequent due process hearing involving the same or substantially similar issues as those alleged in the hearing which was dismissed or nonsuited, then, absent good cause or unless the parties agree otherwise, the Disclosure Deadline for the subsequent due process hearing shall be the same date as was established for the hearing that was dismissed or nonsuited.

§89.1185. Hearing.

- (a) The hearing officer shall afford the parties an opportunity for hearing within the timelines set forth in 34 Code of Federal Regulations (CFR), §300.515 and §300.532, as applicable, ~~after reasonable notice of not less than ten days,~~ unless the parties agree otherwise, except that the parties must comply with the timelines for expedited hearings .
- (b) Each hearing shall be conducted at a time and place that are reasonably convenient to the parents and child involved.
- (c) All persons in attendance shall comport themselves with the same dignity, courtesy, and respect required by the district courts of the State of Texas. All argument shall be made to the hearing officer alone.
- (d) Except as modified or limited by the provisions of 34 CFR, ~~[Code of Federal Regulations (CFR),]~~ §§300.507-300.514, or 300.532, ~~300.521, or 300.528,~~ or the provisions of §§89.1151-89.1191 of this subchapter, the Texas Rules of Civil Procedure shall govern the proceedings at the hearing and the Texas Rules of Evidence shall govern evidentiary issues.
- (e) Before a document may be offered or admitted into evidence, the document must be identified as an exhibit of the party offering the document. All pages within the exhibit must be numbered, and all personally identifiable information must be redacted from the exhibit.
- (f) The hearing officer may set reasonable time limits for presenting evidence at the hearing.
- (g) Upon request, the hearing officer, at his or her discretion, may permit testimony to be received by telephone.
- (h) Granting of a motion to exclude witnesses from the hearing room shall be at the hearing officer's discretion.
- (i) Hearings conducted under this subchapter shall be closed to the public, unless the parent requests that the hearing be open.
- (j) The hearing shall be recorded and transcribed by a reporter, who shall immediately prepare and transmit a transcript of the evidence to the hearing officer with copies to each of the parties. The hearing officer shall instruct the reporter to delete all personally identifiable information from the transcription of the hearing.
- (k) Filing of post-hearing briefs shall be permitted only upon order of the hearing officer ~~[and only upon a finding by the hearing officer that the legal issues involved in the hearing are novel or unsettled in the State of Texas or the Fifth Circuit. Any post-hearing briefs permitted by the hearing officer shall be limited to the legal issues specified by the hearing officer]~~ .
- (l) The hearing officer shall issue a final decision, signed and dated, no later than 45 days after the expiration of the 30-day period under 34 CFR, §300.510(b), or the adjusted time periods described in 34 CFR, §300.510(c), after a request for hearing is received by the Texas Education Agency, unless the deadline for a final decision has been extended by the hearing officer as provided in subsection (n) ~~(o)~~ of this section. A final decision must be in writing and must include findings of fact and conclusions of law separately stated. Findings of fact must be based exclusively on the evidence presented at the hearing. The final decision shall be mailed to each party by the hearing officer. The hearing officer, at his or her discretion, may render his or her decision following the conclusion of the hearing, to be followed by written findings of fact and written decision.
- (m) At the request of either party, the hearing officer shall include, in the final decision, specific findings of fact regarding the following issues:
 - (1) whether the parent or the school district unreasonably protracted the final resolution of the issues in controversy in the hearing; and

- (2) if the parent was represented by an attorney, whether the parent's attorney provided the school district the appropriate information in the due process complaint in accordance with 34 CFR, §300.508(b). [~~§300.507(e).~~]

~~[(n)] In making a finding regarding the issue described in subsection (m)(1) of this section, the hearing officer shall consider the extent to which each party had notice of, or the opportunity to resolve, the issues presented at the due process hearing prior to the date on which the due process hearing was requested. If, after the date on which a request for a due process hearing is filed, either the parent or the school district requests that a meeting of the admission, review, and dismissal (ARD) committee of the student who is the subject of the due process hearing be convened to discuss the issues raised in the request for a due process hearing, the hearing officer shall also consider the extent to which each party participated in the ARD committee meeting in a good faith attempt to resolve the issue(s) in dispute prior to proceeding to a due process hearing.]~~

~~[(n)]~~ [(o)] A hearing officer may grant extensions of time for good cause beyond the time [45 day] period specified in subsection (l) of this section at the request of either party. Any such extension shall be granted to a specific date and shall be stated in writing by the hearing officer to each of the parties.

~~[(o)]~~ [(p)] The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States, as provided in 20 United States Code (USC), §1415(i)(2), and 34 CFR, §300.516. [~~§300.512.~~]

~~[(p)]~~ [(q)] In accordance with 34 CFR, §300.518(d), [~~§300.514(e).~~] a school district shall implement any decision of the hearing officer that is, at least in part, adverse to the school district in a timely manner within ten school days after the date the decision was rendered. School districts must provide services ordered by the hearing officer, but may withhold reimbursement during the pendency of appeals.

§89.1191. Special Rule for Expedited Due Process Hearings.

An expedited due process hearing requested by a party under 34 Code of Federal Regulations [~~(CFR)~~], §300.532, [~~§300.528.~~] shall be governed by the same rules as are applicable to due process hearings generally, except that the final decision of the hearing officer must be issued and mailed to each of the parties no later than 45 days after the date the request for the expedited hearing is received by the Texas Education Agency, without exceptions or extensions.