

ATTACHMENT I

Statutory Citations Relating to Amendment 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, §89.1070, Graduation Requirements

Texas Education Code (TEC), §28.0212, Personal Graduation Plan.

- (a) A principal shall designate a guidance counselor, teacher, or other appropriate individual to develop and administer a personal graduation plan for each student enrolled in a junior high, middle, or high school who:
 - (1) does not perform satisfactorily on an assessment instrument administered under Subchapter B, Chapter 39; or
 - (2) is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade level nine, as determined by the district.
- (b) A personal graduation plan must:
 - (1) identify educational goals for the student;
 - (2) include diagnostic information, appropriate monitoring and intervention, and other evaluation strategies;
 - (3) include an intensive instruction program described by Section 28.0213;
 - (4) address participation of the student's parent or guardian, including consideration of the parent's or guardian's educational expectations for the student; and
 - (5) provide innovative methods to promote the student's advancement, including flexible scheduling, alternative learning environments, on-line instruction, and other interventions that are proven to accelerate the learning process and have been scientifically validated to improve learning and cognitive ability.
- (c) Notwithstanding Subsection (b), a student's individualized education program developed under Section 29.005 may be used as the student's personal graduation plan under this section.
- (d) The agency shall establish minimum standards for a personal graduation plan under this section.
- (e) Each school district is encouraged to establish for each student entering grade nine a personal graduation plan that identifies a course of study that:
 - (1) promotes:
 - (A) college and workforce readiness; and
 - (B) career placement and advancement; and
 - (2) facilitates the student's transition from secondary to postsecondary education.
- (g) Each school district is encouraged to establish for each student entering grade nine a personal graduation plan that identifies a course of study that:
 - (1) promotes:
 - (A) college and workforce readiness; and
 - (B) career placement and advancement; and
 - (2) facilitates the student's transition from secondary to postsecondary education.

TEC, §28.0213, Intensive Program of Instruction.

- (a) A school district shall offer an intensive program of instruction to a student who does not perform satisfactorily on an assessment instrument administered under Subchapter B, Chapter 39.
- (b) A school district shall design the intensive program of instruction described by Subsection (a) to:
 - (1) enable the student to:
 - (A) to the extent practicable, perform at the student's grade level at the conclusion of the next regular school term; or
 - (B) attain a standard of annual growth specified by the school district and reported by the district to the agency; and
 - (2) if applicable, carry out the purposes of Section 28.0211.
- (c) A school district shall use funds appropriated by the legislature for an intensive program of instruction to plan and implement intensive instruction and other activities aimed at helping a student satisfy state and local high school graduation requirements. The commissioner shall distribute funds to districts that implement a program under this section based on the number of students identified by the district who:
 - (1) do not perform satisfactorily on an assessment instrument administered under Subchapter B, Chapter 39; or
 - (2) are not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade nine, as determined by the district.
- (d) A school district's determination of the appropriateness of a program for a student under this section is final and does not create a cause of action.
- (e) For a student in a special education program under Subchapter A, Chapter 29, who does not perform satisfactorily on an assessment instrument administered under Section 39.023(a), (b), or (c), the student's admission, review, and dismissal committee shall design the program to:
 - (1) enable the student to attain a standard of annual growth on the basis of the student's individualized education program; and
 - (2) if applicable, carry out the purposes of Section 28.0211.

TEC, §29.001, Statewide Plan.

The agency shall develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of three and 21. The statewide design shall include the provision of services primarily through school districts and shared services arrangements, supplemented by regional education service centers. The agency shall also develop and implement a statewide plan with programmatic content that includes procedures designed to:

- (1) ensure state compliance with requirements for supplemental federal funding for all state-administered programs involving the delivery of instructional or related services to students with disabilities;
- (2) facilitate interagency coordination when other state agencies are involved in the delivery of instructional or related services to students with disabilities;

- (3) periodically assess statewide personnel needs in all areas of specialization related to special education and pursue strategies to meet those needs through a consortium of representatives from regional education service centers, local education agencies, and institutions of higher education and through other available alternatives;
- (4) ensure that regional education service centers throughout the state maintain a regional support function, which may include direct service delivery and a component designed to facilitate the placement of students with disabilities who cannot be appropriately served in their resident districts;
- (5) allow the agency to effectively monitor and periodically conduct site visits of all school districts to ensure that rules adopted under this section are applied in a consistent and uniform manner, to ensure that districts are complying with those rules, and to ensure that annual statistical reports filed by the districts and not otherwise available through the Public Education Information Management System under Section 42.006, are accurate and complete;
- (6) ensure that appropriately trained personnel are involved in the diagnostic and evaluative procedures operating in all districts and that those personnel routinely serve on district admissions, review, and dismissal committees;
- (7) ensure that an individualized education program for each student with a disability is properly developed, implemented, and maintained in the least restrictive environment that is appropriate to meet the student's educational needs;
- (8) ensure that, when appropriate, each student with a disability is provided an opportunity to participate in career and technology and physical education classes, in addition to participating in regular or special classes;
- (9) ensure that each student with a disability is provided necessary related services; and
- (10) ensure that an individual assigned to act as a surrogate parent for a child with a disability, as provided by 20 U.S.C. Section 1415(b) and its subsequent amendments, is required to:
 - (A) complete a training program that complies with minimum standards established by agency rule;
 - (B) visit the child and the child's school;
 - (C) consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers;
 - (D) review the child's educational records;
 - (E) attend meetings of the child's admission, review, and dismissal committee;
 - (F) exercise independent judgment in pursuing the child's interests; and
 - (G) exercise the child's due process rights under applicable state and federal law.

TEC, §29.003, Eligibility Criteria.

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

- (b) A student is eligible to participate in a school district's special education program if the student:
 - (1) is not more than 21 years of age and has a visual or auditory impairment that prevents the student from being adequately or safely educated in public school without the provision of special services; or
 - (2) is at least three but not more than 21 years of age and has one or more of the following disabilities that prevents the student from being adequately or safely educated in public school without the provision of special services:
 - (A) physical disability;
 - (B) mental retardation;
 - (C) emotional disturbance;
 - (D) learning disability;
 - (E) autism;
 - (F) speech disability; or
 - (G) traumatic brain injury.

TEC, §29.005, Individualized Education Program (excerpt).

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

Texas Education Code, §39.023, Adoption and Administration of Instruments (excerpt).

- (c) The agency shall also adopt end-of-course assessment instruments for secondary-level courses in Algebra I, Algebra II, geometry, biology, chemistry, physics, English I, English II, English III, world geography, world history, and United States history. The Algebra I, Algebra II, and geometry end-of-course assessment instruments must be administered with the aid of technology. A school district shall comply with State Board of Education rules regarding administration of the assessment instruments listed in this subsection and shall adopt a policy that requires a student's performance on an end-of-course assessment instrument for a course listed in this subsection in which the student is enrolled to account for 15 percent of the student's final grade for the course. If a student retakes an end-of-course assessment instrument for a course listed in this subsection, as provided by Section 39.025, a school district is not required to use the student's performance on the subsequent administration or administrations of the assessment instrument to determine the student's final grade for the course. If a student is in a special education program under Subchapter A, Chapter 29, the student's admission, review, and dismissal committee shall determine whether any allowable modification is necessary in administering to the student an assessment instrument required under this subsection. The State Board of Education shall administer the assessment instruments. The State Board of Education shall adopt a schedule for the administration of end-of-course assessment instruments that complies with the requirements of Subsection (c-3).

TEC, §42.003, Student Eligibility.

- (a) A student is entitled to the benefits of the Foundation School Program if, on September 1 of the school year, the student is 5 years of age or older and under 21 years of age and has not graduated from high school, or is at least 21 years of age and under 26 years of age and has been admitted by a school district to complete the requirements for a high school diploma.

- (b) A student to whom Subsection (a) does not apply is entitled to the benefits of the Foundation School Program if the student is enrolled in a prekindergarten class under Section 29.153.
- (c) A child may be enrolled in the first grade if the child is at least six years of age at the beginning of the school year of the district or has been enrolled in the first grade or has completed kindergarten in the public schools in another state before transferring to a public school in this state.
- (d) Notwithstanding Subsection (a), a student younger than five years of age is entitled to the benefits of the Foundation School Program if:
 - (1) the student performs satisfactorily on the assessment instrument administered under Section 39.023(a) to students in the third grade; and
 - (2) the district has adopted a policy for admitting students younger than five years of age.

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

General

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

34 CFR, §300.160, Participation in assessments.

- (a) General. A State must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.
- (b) Accommodation guidelines.
 - (1) A State (or, in the case of a district-wide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.
 - (2) The State's (or, in the case of a district-wide assessment, the LEA's) guidelines must--
 - (i) Identify only those accommodations for each assessment that do not invalidate the score; and
 - (ii) Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.
- (c) Alternate assessments.
 - (1) A State (or, in the case of a district-wide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in paragraph (a) of this section.
 - (2) For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph (c)(1) of this section must provide for alternate assessments that--
 - (i) Are aligned with the State's challenging academic content standards and challenging student academic achievement standards;

- (ii) If the State has adopted modified academic achievement standards permitted in 34 CFR 200.1(e), measure the achievement of children with disabilities meeting the State's criteria under Sec. 200.1(e)(2) against those standards; and
 - (iii) If the State has adopted alternate academic achievement standards permitted in 34 CFR 200.1(d), measure the achievement of children with the most significant cognitive disabilities against those standards.
- (d) Explanation to IEP Teams. A State (or in the case of a district-wide assessment, an LEA) must provide IEP Teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of State or local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).
- (e) Inform parents. A State (or in the case of a district-wide assessment, an LEA) must ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their child's achievement will be measured based on alternate or modified academic achievement standards.
- (f) Reports. An SEA (or, in the case of a district-wide assessment, an LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:
 - (1) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.
 - (2) The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards.
 - (3) The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards.
 - (4) The number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards.
 - (5) Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards, and alternate assessments based on alternate academic achievement standards if--
 - (i) The number of children participating in those assessments is sufficient to yield statistically reliable information; and
 - (ii) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.
- (g) Universal design. An SEA (or, in the case of a district-wide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this section.