

The Texas Education Agency (TEA) adopts an amendment to §102.1601, concerning the supplemental special education services (SSES) and instructional materials program for certain public school students receiving special education services. The amendment is adopted with changes to the proposed text as published in the February 23, 2024 issue of the *Texas Register* (49 TexReg 955) and will be republished. The adopted amendment implements House Bill 1926, 88th Texas Legislature, Regular Session, 2023, which removed the expiration date of the program and removed a limit on the maximum amount of funds that can be spent on the program. Instead, the program will be limited only to the appropriation set aside by the legislature. The adopted amendment also modifies eligibility criteria, establishes an annual application window and procedures for families who miss the window, and removes program notification requirements in certain circumstances.

REASONED JUSTIFICATION: Section 102.1601 defines the eligibility criteria, application process, and use of funds for the SSES program and clarifies restrictions on the program.

The adopted amendment to §102.1601 adds new subsection (a) to reflect that TEA will administer this program under the name Parent-Directed Special Education Services to better signal to parents the intended scope of the program. Adopted changes throughout the section would align with this program name change.

The adopted amendment to relettered subsection (c) clarifies that only students served by special education under an individualized education program, as opposed to a services plan as part of a proportionate share responsibility, are eligible for the program. In subsection (c)(2), a reference to the program's launch in the 2020-2021 school year has been added to clarify that students who have already received this grant are no longer eligible.

Rellettered subsection (d)(1) identifies the specific grant amount, noting that the grants are subject to state appropriations. The adopted amendment to relettered subsection (d)(2) clarifies that TEA will use the fall data submission deadline to verify student eligibility for the program. Language is removed that references prioritization based on eligibility for the National School Lunch Program. This prioritization is already included in subsection (d)(1), which states that accounts are prioritized for students who are eligible for the compensatory education allotment.

Rellettered subsection (e) is amended to delete an operational requirement for the education service center to increase the number of qualified service providers, as there is a continuous process for providers who wish to be considered.

New subsection (f)(3) is added to establish an annual application window. For applicants who do not show as eligible under the fall Public Education Information Management System (PEIMS) data collection used by TEA, a parent will need to submit evidence of eligibility when submitting the application. New subsection (f)(6) adds a requirement for a parent or guardian of a student who is deemed not eligible through PEIMS verification or did not submit the necessary paperwork during the application window when applicable to wait until the following school year's application window to reapply.

Rellettered subsection (j) is amended to remove the program notification requirement if a school district or open-enrollment charter school has verified that a parent has already received or applied for a program grant.

Based on public comment, subsection (j)(1) is changed at adoption to remove the proposed phrase "on applying" from the admission, review, and dismissal (ARD) committee requirement to provide information on the SSES program.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began February 23, 2024, and ended March 25, 2024, and included public hearings on March 7 and 8, 2024. Following is a summary of public comments received and agency responses.

Comment: The Texas Council of Administrators of Special Education (TCASE) and Disability Rights Texas (DRTX) commented that the proposed rule should not include a name change for the SSES program to Parent-Directed Special Education Services and should retain the term "supplemental".

Response: The agency disagrees. Removing "supplemental" in the name of the grant and adding "parent directed" makes it clearer that these are funds that the parent can decide how to use to benefit their own student.

Comment: TCASE commented that the proposed amendment in re-lettered subsection (j) should not include the ARD committee requirement to provide instructions on applying for the SSES program.

Response: The agency agrees and has removed "on applying" at adoption in relettered subsection (j) to delete this reference.

Comment: TCASE requested that TEA provide districts with an accurate data interface to determine if a student has already accessed an SSES grant.

Response: This comment is outside the scope of the proposed rulemaking. However, the agency provides the following clarification. Creating a real-time data system at this time is not possible or feasible. TEA will continue to provide local educational agencies with the list of their remaining eligible students annually prior to the application window.

Comment: TCASE expressed appreciation for the annual application window established in new subsection (f)(3) and recommended that TEA update their SSES resources for families on the TEA website states that the program is offered on a "first come, first serve" basis.

Response: This comment is outside the scope of the proposed rulemaking. However, the agency provides the following clarification. All outreach materials will be updated to match the new programmatic changes as a result of this rule change.

Comment: DRTX commented that the proposed rule should clarify that adult students with disabilities may apply for and receive SSES grants.

Response: The agency disagrees. Re-lettered subsection (c) establishes eligibility criteria to include an adult student who is enrolled in an 18+ program as eligible for the program. If an adult student applies for the program, program staff would verify eligibility on a case-by-case basis.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §29.041, which establishes requirements for providing a supplemental special education services (SSES) and instructional materials program for certain public school students receiving special education services and requires the commissioner of education by rule to determine, in accordance with TEC, Chapter 29, Subchapter A-1, the criteria for providing a program to provide supplemental special education services and instructional materials for eligible public school students; TEC, §29.042, as amended by House Bill 1926, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner to determine requirements related to the establishment and administration of the SSES program; TEC, §29.043, which requires the commissioner to establish an application process for the SSES program; TEC, §29.044, which requires the commissioner to determine eligibility criteria for the approval of an application submitted under TEC, §29.043; TEC, §29.045, which requires the commissioner to determine requirements for students meeting eligibility criteria and requirements for assigning and maintaining accounts under TEC, §29.042(b); TEC, §29.046, which requires the commissioner to determine requirements and restrictions related to account use for accounts assigned to students under TEC, §29.045; TEC, §29.047, which requires the commissioner to determine requirements related to criteria and application for agency-approved providers and vendors; TEC, §29.048, which requires the commissioner to determine responsibilities for the admission, review, and dismissal committee; and TEC, §29.049, which requires that the commissioner adopt rules as necessary to establish and administer the SSES and instructional materials program.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §29.041; §29.042, as amended by House Bill 1926, 88th Texas Legislature, Regular Session, 2023; and §§29.043-29.049.

<rule>

§102.1601. Supplemental Special Education Services and Instructional Materials Program for Certain Public School Students Receiving Special Education Services.

- (a) The Texas Education Agency (TEA) will administer the Supplemental Special Education Services Program described in Texas Education Code (TEC), Chapter 29, Subchapter A-1, under the name Parent-Directed Special Education Services (PDSSES). Any reference to the Supplemental Special Education Services Program, supplemental special education services, supplemental special education instructional materials, or SSES in state law and TEA materials is to be considered synonymous with the PDSSES program.
- (b) Definitions. For the purposes of this section, the following definitions apply.
 - (1) Eligible student--A student who meets all program eligibility criteria under TEC, §29.044, and this section.
 - (2) Management system--The online system provided by the marketplace vendor to allow for account creation, management of funds, and access to the marketplace.
 - (3) Marketplace--The virtual platform where parents and guardians with program funds may purchase goods and services.
 - (4) Marketplace vendor--The vendor chosen by TEA to create an online marketplace for the use of program funds.
 - (5) Parent-directed special education instructional materials (materials) --This term has the meaning defined in TEC, §29.041, and specifically excludes materials that are provided as compensatory services or as a means of providing a student with a free appropriate public education.
 - (6) Parent-directed special education services (services) --This term has the meaning defined in TEC, §29.041, and specifically excludes services that are provided as compensatory services or as a means of providing a student with a free appropriate public education or an independent educational evaluation.
 - (7) Program--This term has the meaning in TEC, Chapter 29, Subchapter A-1, as well as the PDSSES program.
- (c) Eligibility criteria. All students currently enrolled in a Texas public school district or open-enrollment charter school who are served under an individualized education program (IEP) in a special education program, including, but not limited to, students in early childhood special education, prekindergarten, Kindergarten-Grade 12, and 18-and-over transition programs, are eligible for the program with the following exclusions:
 - (1) students who do not reside in Texas or move out of the state, not including military-connected students entitled to enroll or remain enrolled while outside the state; or
 - (2) students who previously received a program grant, beginning with the program's launch in the 2020-2021 school year.
- (d) Awards.
 - (1) Parents and guardians of eligible students will receive grants of \$1,500 as long as funds are available for use in the purchasing of materials and services through the curated marketplace of educational goods and services. Parents and guardians may receive only one grant for each eligible student. A student enrolled in a school district or open-enrollment charter school that is eligible for a compensatory education allotment under TEC, §48.104, will be prioritized to receive a grant award.
 - (2) TEA will use Public Education Information Management System (PEIMS) codes submitted by school districts and open-enrollment charter schools by each school year's TEA-established fall data submission deadline to verify eligibility in order to award accounts for the program.
- (e) Establishment of the marketplace.

- (1) In accordance with TEC, §29.042(d), TEA shall award an education service center (ESC) with an operational and school district support grant, which may include, but is not limited to, the following operational requirements:
 - (A) writing and administering a contract for a vendor for the program marketplace that curates the content in its marketplace for educational relevancy. In accordance with the Family Educational Rights and Privacy Act, the contract must require the vendor for the marketplace to protect and keep confidential students' personally identifiable information, which may not be sold or monetized;
 - (B) providing technical assistance to parents and guardians throughout the program process;
 - (C) serving as the main point of contact for the selected marketplace vendor to ensure eligible student accounts are appropriately spent down;
 - (D) approving or denying all purchases from the program marketplace, including communication with parents and guardians about purchase order requests; and
 - (E) approving or denying all potential service providers.
 - (2) Providers of materials and services may apply to be listed in the marketplace. To become an approved marketplace service provider, an applicant must sign a service provider agreement and comply with licensing, safety, and employee background checks.
 - (A) Organization service providers are required to provide their Texas Tax ID for TEA to verify the validity of the organization.
 - (B) Individual service providers are required to provide proof of credentials and licensing in accordance with the individual service provider categories established by TEA.
 - (3) TEA shall provide a process for the application and approval of vendors to the marketplace.
 - (4) TEA and the marketplace vendor shall provide a curated list of vendors through which parents and guardians can purchase educationally relevant materials. The established marketplace vendor shall be responsible for ensuring the vendors comply with program parameters as they relate to the marketplace and be responsible for all communications with marketplace vendors.
- (f) Application process for grant on behalf of a student.
- (1) TEA is responsible for the application process and the determination of which applicants are approved for program grants.
 - (2) Parents and guardians who would like to apply on behalf of their eligible students must complete the online application.
 - (3) TEA will establish an annual application window. If applications are submitted during the window for students who would not show as eligible under the fall PEIMS data collection used by TEA under subsection (d)(2) of this section, a parent must submit evidence of eligibility when submitting the application.
 - (4) Upon approval of the application:
 - (A) TEA shall send contact information for parents and guardians of eligible students in a secure manner to the online marketplace vendor for account creation and distribution;
 - (B) parents and guardians of eligible students will receive an email to the same email address provided during application from the marketplace vendor with information on how to access their accounts; and
 - (C) parents and guardians will be awarded an account of \$1,500, depending on availability of funds, per eligible student to be used to purchase services and materials.
 - (5) Parents and guardians of students who are deemed not eligible or who are determined to have violated account use restrictions under subsection (i) of this section will receive notification from

TEA and be provided an opportunity to appeal the denial or account use determination. TEA shall exercise its discretion to determine the validity of any such appeal.

- (6) A parent or guardian of a student who is deemed not eligible because the student cannot be verified through the PEIMS process described under subsection (d)(2) of this section or because the parent or guardian did not submit the necessary documentation during the designated application window for a student who became eligible after the timeline described in subsection (d)(2) of this section but before the end of the application window must wait until the following school year's application window to reapply.
 - (7) If necessary, eligible students will be placed on a waitlist and parents and guardians will be notified. When additional funds become available, priority will be given in the order established by the waitlist and in accordance with subsection (d) of this section.
 - (8) TEA shall maintain confidentiality of students' personally identifiable information in accordance with the Family Educational Rights and Privacy Act and, to the extent applicable, the Health Insurance Portability and Accountability Act.
- (g) Approval of application; assignment of account.
- (1) TEA shall set aside funds for a pre-determined number of accounts of \$1,500 to be awarded to parents and guardians of eligible students.
 - (2) Parents and guardians with more than one eligible student may apply and receive a grant for each eligible student.
 - (3) Approved parents and guardians will receive an award notification email from the marketplace vendor and may begin spending account funds upon completion of account setup.
 - (4) Parents and guardians who receive an award notification but whose student no longer qualifies under subsection (c) of this section shall notify TEA of their student's change in eligibility status.
 - (5) Within 30 calendar days from receiving an award notification email, parents and guardians must:
 - (A) access or log in to their account or the account may be subject to reclamation; and
 - (B) agree to and sign the parental agreement.
- (h) Use of funds. Use of program funds provided to parents and guardians are limited as follows.
- (1) Only materials and services available through the marketplace of approved providers and vendors may be purchased with program funds.
 - (2) Materials and services must directly benefit the eligible student's educational needs.
 - (3) Materials shall be used in compliance with TEA purchasing guidelines.
 - (4) If TEA approves vendors for a category of material under subsection (e) of this section, materials must be purchased from the TEA-approved vendor for that category of material. If TEA does not establish criteria for a category of materials, funds in a student's account may be used to purchase the materials from any vendor.
 - (5) The contracted ESC has full authority to reject or deny any purchase.
 - (6) Parents and guardians may not use program funds for reimbursement of goods or services obtained outside of the marketplace. Program funds shall not be paid directly to parents or guardians of eligible students.
- (i) Account use restrictions. TEA may, subject to the appeal process referenced in subsection (f)(5) of this section, close or suspend accounts and reclaim a portion or all of the funds from accounts in the marketplace if:
- (1) the materials or services that parents or guardians attempt to purchase are not educational in nature or are deemed to be in violation of the purchasing guidelines set forth by TEA;

- (2) it is determined that the materials or services purchased do not meet the definitions in subsection (b)(5) and (6) of this section;
 - (3) the program parental agreement is not signed within 30 calendar days of receipt of account email from the marketplace vendor; or
 - (4) a student no longer meets the eligibility criteria set out in subsection (c) of this section.
- (j) Requirements to provide information. School districts and open-enrollment charter schools shall notify families of the program and, unless the school district or charter school has verified that a parent has already received or applied for a program grant, shall provide the following at the student's admission, review, and dismissal (ARD) committee meeting:
- (1) instructions and resources on accessing the online accounts, including the application window established by TEA; and
 - (2) information about the types of goods and services that are available through the program grant.
- (k) Restrictions. A student's ARD committee may not consider a student's current or anticipated eligibility for any materials or services that may be provided under this section when developing or revising a student's IEP, when determining a student's educational setting, or in the provision of a free appropriate public education.