

The Texas Education Agency (TEA) proposes amendment to §§89.1049, 89.1065, and 89.1141, concerning special education services. The proposed amendments would clarify terminology and codify current program practices.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 89.1049 establishes parental rights regarding adult students. The proposed amendment to §89.1049 would remove references to an outdated school year.

Section 89.1065 establishes criteria for extended school year (ESY) services.

The proposed amendment to §89.1065(2) would establish the documentation required for ESY services to include data collected by the district and the student's parents using assessments, as opposed to evaluations. The amendment would also replace language related to individualized education program (IEP) goals and objectives with language related to areas where the student previously demonstrated acquired progress. An additional change would clarify severe or substantial regression as the student being unable to maintain previously acquired progress in one or more critical IEP areas in the absence of ESY services.

Section 89.1065(5) would be revised to establish a requirement for the admission, review, and dismissal (ARD) committee to consider ESY services at the student's annual IEP review, as opposed to the parent requesting a discussion regarding ESY services at the ARD committee meeting. Language would be added to specify that if a student for whom ESY services were considered and rejected at the annual IEP review later demonstrates a need for ESY services, the parent and school district must determine either through an IEP amendment by agreement in accordance with 34 CFR, §300.324(a)(4), or during an ARD committee meeting the location, duration, and frequency of ESY services the student requires.

New §89.1065(10) would add criteria regarding a student requiring ESY services who withdraws during the summer months from one district and registers in another to require the new district to be responsible for fulfilling ESY services. The new district may include the direct provision of the services or contract with the previous district or another entity to provide the services or payment for the services.

Section 89.1141 establishes education service center regional special education leadership. The section would be amended to remove guidelines already established in statute and/or program and grant guidelines.

FISCAL IMPACT: Justin Porter, associate commissioner and chief program officer for special populations, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand and limit existing regulations to clarify terminology and add into rule current program practices.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency;

would not create a new regulation; would not repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Porter has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to update §89.1049 to define the age range for student eligibility for receiving special education and related services; update §89.1065 to establish criteria for ESY services, including a revision to establish a requirement for the ARD committee to consider ESY services at the student's annual IEP review, as opposed to the parent requesting a discussion regarding ESY services at the ARD committee meeting, and add criteria for schools serving a student for whom ESY services were considered and rejected at the annual IEP review and who later demonstrates a need for ESY services; and update §89.1141 to remove guidelines for education service center regional special education leadership as these guidelines are already established in statute and/or program and grant guidelines. There is no anticipated economic cost to persons who are required to comply with the proposals.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting implications.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins March 22, 2024, and ends April 22, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Public hearings will be conducted to solicit testimony and input on the proposed amendments at 9:30 a.m. on April 4 and 5, 2024. The public may participate in either hearing virtually by linking to the hearing at <https://zoom.us/j/96584642284>. Anyone wishing to testify must be present at 9:30 a.m. and indicate to TEA staff their intent to comment and are encouraged to also send written testimony to sped@tea.texas.gov. The hearing will conclude once all who have signed in have been given the opportunity to comment. Questions about the hearing should be directed to Derek Hollingsworth, Special Populations Policy, Reporting, and Technical Assistance, Derek.Hollingsworth@tea.texas.gov.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §8.001, which establishes the operation of education service centers; TEC, §8.002, which defines the purpose of education service centers; TEC, §8.051, which establishes the core services of education service centers and services to improve student and district performance; TEC, §8.052, which requires education service centers to use funds distributed under TEC, §8.123, to implement initiatives identified by the legislature; TEC, §8.053, which defines additional services a regional service center may provide; TEC, §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.017, which establishes criteria for the transfer of rights from a parent to a child with a disability who is 18 or older or whose disabilities have been removed under Texas Family Code, Chapter 31, to make educational decisions; 34 Code of Federal Regulations (CFR), §300.12, which defines criteria for an educational service agency; 34 CFR, §300.320, which defines the requirements for an individualized education program (IEP); 34 CFR, §300.321, which establishes the requirements of an IEP team for each child with a disability; 34 CFR, §300.520, which establishes the criteria for the transfer of parental rights for a child with a disability who reaches the age of majority under state law; and 34 CFR, §300.106, which establishes the criteria for extended school year services.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§8.001, 8.002, 8.051, 8.052, 8.053, 29.001, and 29.017; and 34 Code of Federal Regulations, §§300.12, 300.320, 300.321, 300.520, and 300.106.

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§89.1049. Parental Rights Regarding Adult Students.

- (a) In accordance with 34 Code of Federal Regulations (CFR), §300.320(c) and §300.520, 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. ~~The [Beginning with the 2018-2019 school year, the]~~ IEP must also state that the student has been provided information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Texas Estates Code, Chapter 1357, and other supports and services that may enable the student to live independently. 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), 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 Texas Estates Code, Title 3.
- (c) In accordance with 34 CFR, §300.520(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. ~~The [Beginning with the 2018-2019 school year, the]~~ notice must also include information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Texas Estates Code, Chapter 1357, and other supports and services that may enable the student to live independently, and must provide contact information for the parties to use in obtaining additional information.
- (d) A notice under IDEA, Part B, which 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), 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 supported decision-making agreement or a valid power of attorney from being executed by an individual who holds rights under IDEA, Part B.

§89.1065. Extended School Year 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, 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 using data collected by the district and the student's parents using [from] formal or [and/or] informal assessments [evaluations provided by the district or the parents]. The documentation must demonstrate that in one or more critical areas

addressed in the current individualized education program (IEP) where the student has previously demonstrated acquired progress ~~[goals and 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 previously acquired progress in one or more ~~[acquired]~~ critical IEP areas ~~[skills]~~ in the absence of ESY services.

- (3) The reasonable period of time for recoupment of acquired critical skills must 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 must 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) The ARD committee must consider ESY services ~~[If the district does not propose ESY services for discussion]~~ at the annual review of a student's IEP. If a student for whom ESY services were considered and rejected at the annual IEP review meeting later demonstrates a need for ESY services based on the criteria described in this section, the parent and school district must determine either through an IEP amendment by agreement in accordance with 34 CFR, §300.324(a)(4), or during an ARD committee meeting the location, duration, and frequency of ESY services the student requires ~~[the parent may request that the ARD committee discuss ESY services pursuant to 34 CFR, §300.321]~~.
- (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 must 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 must 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 will 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.
- (10) If a student whose IEP notes that ESY services are required withdraws from one district and registers in another district during the summer months, the new district will be responsible for

ensuring those services are provided. This may include the direct provision of those services or contracting with the previous district or another entity to provide the services or payment for the services.

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§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'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.
- ~~[(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 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.]~~