

The Texas Education Agency (TEA) proposes 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 proposed amendment would implement House Bill (HB) 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 proposed amendment would also modify eligibility criteria, establish an annual application window and procedures for families who miss the window, and remove program notification requirements in certain circumstances.

BACKGROUND INFORMATION AND 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 proposed amendment to §102.1601 would add new subsection (a) to reflect that TEA will administer the program under the name Parent-Directed Special Education Services to better signal to parents the intended scope of the program. Proposed changes throughout the section would align with this program name change.

The proposed amendment to relettered subsection (c) would clarify 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, would be eligible for the program. In subsection (c)(2), a reference to the program's launch in the 2020-2021 school year would be added to clarify that students who have already received this grant are no longer eligible.

Rellettered subsection (d)(1) would identify the specific grant amount, noting that the grants are subject to state appropriations. The proposed amendment to relettered subsection (d)(2) would clarify that TEA will use the fall data submission deadline to verify student eligibility for the program. Language would be 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) would be 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) would be added to establish an annual application window. For applicants who would not show as eligible under the fall Public Education Information Management System (PEIMS) data collection used by TEA, a parent would need to submit evidence of eligibility when submitting the application. New subsection (f)(6) would add 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) would be 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.

FISCAL IMPACT: Justin Porter, associate commissioner and chief program officer for special populations, has determined that for the first five years 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 an existing regulation, which is necessary to align with HB 1926 and 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 limit or 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 clarification on how TEA implements the SSES program. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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 February 23, 2024, and ends March 25, 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 amendment at 9:30 a.m. on February 28, 2024, and March 8, 2024. The public may participate in either hearing virtually by linking to the hearing at <https://zoom.us/j/93841733293>. 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 Division, at Derek.Hollingsworth@tea.texas.gov.

STATUTORY AUTHORITY. The amendment is proposed 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 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) ~~(a)~~ Definitions. For the purposes of this section, the following definitions apply.

- (1) Eligible student--A student who meets all program eligibility criteria under TEC [Texas Education Code (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 [Supplemental Special Education Services (SSES)] program funds may purchase goods and services.
- (4) Marketplace vendor--The vendor chosen by TEA [the Texas Education Agency (TEA)] to create an online marketplace for the use of [SSES] program funds.
- (5) Parent-directed [Supplemental] 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 [Supplemental] 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) ~~(b)~~ 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 [during the 2021-2022 or 2022-2023 school year] , 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 [SSES] 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 [an SSES grant] .

(d) ~~(c)~~ Awards.

- (1) Parents and guardians of eligible students will [may] receive grants [as long as funds are available] of [up to] \$1,500 as long as funds are available [in state funds and may receive additional federal funds, depending on eligibility and availability,] for use in the purchasing of [supplemental special education instructional] materials and [supplemental special education] services through the curated marketplace of educational goods and services. Parents and guardians may receive only

one grant for each eligible student. A student ~~[Students]~~ 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 ~~[SSES]~~ program.

~~[(3) TEA will prioritize the awarding of applicant accounts based on applicants qualifying for the National School Lunch Program and available funds.]~~

(e) ~~[(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 ~~[SSES]~~ 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 ~~[SSES]~~ 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 ~~[SSES]~~ marketplace, including communication with parents and guardians about purchase order requests; and
 - ~~[(E) increasing the number of qualified service providers in the marketplace; and]~~
 - (E) ~~[(E)]~~ approving or denying all potential service providers.
- (2) Providers of ~~[supplemental special education instructional]~~ 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 ~~[supplemental special education instructional]~~ materials. The established marketplace vendor shall be responsible for ensuring the vendors comply with ~~[SSES]~~ program parameters as they relate to the marketplace and be responsible for all communications with marketplace vendors.

(f) ~~[(e)]~~ 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 ~~[SSES]~~ 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) ~~(3)~~ 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 ~~[up to]~~ \$1,500 ~~[in state funds and may be awarded in the account additional federal funds]~~, depending on ~~[eligibility and availability of funds]~~, per eligible student to be used to purchase ~~[supplemental special education]~~ services and ~~[supplemental special education instructional]~~ materials.

(5) ~~(4)~~ Parents and guardians of students who are deemed not eligible or who are determined to have violated account use restrictions under subsection (i) ~~(h)~~ 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) ~~(5)~~ If necessary, eligible students will be placed on a waitlist and parents and guardians will be notified. ~~When [Should]~~ additional funds become available, priority will be given in the order established by the waitlist and in accordance with subsection (d) ~~(e)~~ of this section.

(8) ~~(6)~~ 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) ~~(f)~~ Approval of application; assignment of account.

- (1) TEA shall set aside funds for a pre-determined number of accounts of ~~[up to]~~ \$1,500 ~~[in state funds with additional federal funds set aside, depending on eligibility and availability, per account]~~ 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) ~~(b)~~ 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 ~~[SSES]~~ parental ~~agreement [acknowledgement affidavit]~~.

(h) ~~(g)~~ Use of funds. Use of ~~[SSES]~~ program funds provided to parents and guardians are limited as follows.

- (1) Only ~~[supplemental special education instructional]~~ materials and ~~[supplemental special education]~~ services available through the marketplace of approved providers and vendors may be purchased with ~~[SSES]~~ program funds.

- (2) Materials ~~[Supplemental special education instructional materials]~~ and services must directly benefit the eligible student's educational needs.
 - (3) Materials ~~[Supplemental special education instructional materials]~~ shall be used in compliance with TEA purchasing guidelines.
 - (4) If TEA approves vendors for a category of ~~[instructional]~~ material under subsection (e) ~~[(d)]~~ of this section, ~~[supplemental special education instructional]~~ materials must be purchased from the TEA-approved vendor for that category of ~~[supplemental special education instructional]~~ material. If TEA does not establish criteria for a category of ~~[supplemental special education instructional]~~ materials, funds in a student's account may be used to purchase the ~~[supplemental special education instructional]~~ materials from any vendor.
 - (5) The contracted ESC has full authority to reject or deny any purchase.
 - (6) Parents and guardians may not use [SSES] program funds for reimbursement of goods or services obtained outside of the marketplace. Program ~~[SSES program]~~ funds shall not be paid directly to parents or guardians of eligible students.
- (i) ~~[(h)]~~ Account use restrictions. TEA may, subject to the appeal process referenced in subsection (f)(5) ~~[(e)(4)]~~ of this section, close or suspend accounts and reclaim a portion or all of the funds from accounts in the marketplace if:
- (1) the ~~[supplemental special education]~~ 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 ~~[supplemental special education]~~ materials or services purchased do not meet the definitions in subsection (b)(5) ~~[(a)(5)]~~ and (6) of this section;
 - (3) the [SSES] program parental agreement ~~[acknowledgement affidavit]~~ 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) ~~[(b)]~~ of this section.
- (j) ~~[(i)]~~ Requirements to provide information. School districts and open-enrollment charter schools shall notify families of ~~[their eligibility for]~~ the [SSES] 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 on applying 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 [SSES] grant.
- (k) ~~[(j)]~~ Restrictions. A student's ARD committee may not consider a student's current or anticipated eligibility for any ~~[supplemental special education instructional]~~ materials or services that may be provided under this section when developing or revising a student's IEP ~~[individualized education program]~~ , when determining a student's educational setting, or in the provision of a free appropriate public education.