

ATTACHMENT II
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Chapter 89. Adaptations for Special Populations

Subchapter A. Gifted/Talented Education

Statutory Authority: The provisions of this Subchapter A issued under the Texas Education Code, §29.122 and §42.156(b), unless otherwise noted.

§89.1. Student Assessment.

School districts shall develop written policies on student identification that are approved by the local board of trustees and disseminated to parents. The policies must:

- (1) include provisions for ongoing screening and selection of students who perform or show potential for performing at remarkably high levels of accomplishment in the areas defined in the Texas Education Code, §29.121;
- (2) include assessment measures collected from multiple sources according to each area defined in the Texas State Plan for the Education of Gifted/Talented Students;
- (3) include data and procedures designed to ensure that students from all populations in the district have access to assessment and, if identified, services for the gifted/talented program;
- (4) provide for final selection of students to be made by a committee of at least three local district educators who have received training in the nature and needs of gifted students; and
- (5) include provisions regarding furloughs, reassessment, exiting of students from program services, transfer students, and appeals of district decisions regarding program placement.

Source: The provisions of this §89.1 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.2. Professional Development.

School districts shall ensure that:

- (1) prior to assignment in the program, teachers who provide instruction and services that are a part of the program for gifted students have a minimum of 30 hours of staff development that includes nature and needs of gifted/talented students, assessing student needs, and curriculum and instruction for gifted students;
- (2) teachers without training required in paragraph (1) of this section who provide instruction and services that are part of the gifted/talented program must complete the 30-hour training requirement within one semester;
- (3) teachers who provide instruction and services that are a part of the program for gifted students receive a minimum of six hours annually of professional development in gifted education; and
- (4) administrators and counselors who have authority for program decisions have a minimum of six hours of professional development that includes nature and needs of gifted/talented students and program options.

Source: The provisions of this §89.2 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective February 13, 2000, 25 TexReg 776.

§89.3. Student Services.

School districts shall provide an array of learning opportunities for gifted/talented students in kindergarten through Grade 12 and shall inform parents of the opportunities. Options must include:

- (1) instructional and organizational patterns that enable identified students to work together as a group, to work with other students, and to work independently;
- (2) a continuum of learning experiences that leads to the development of advanced-level products and performances;
- (3) in-school and, when possible, out-of-school options relevant to the student's area of strength that are available during the entire school year; and
- (4) opportunities to accelerate in areas of strength.

Source: The provisions of this §89.3 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.5. Program Accountability.

School districts shall ensure that student assessment and services for gifted/talented students comply with accountability standards defined in the Texas State Plan for the Education of the Gifted/Talented.

Source: The provisions of this §89.5 adopted to be effective September 1, 1996, 21 TexReg 5690.

Subchapter B. Adult Basic and Secondary Education

Statutory Authority: The provisions of this Subchapter B issued under Texas Education Code, §§7.102(c)(16), 29.253, and 29.2535, and the General Appropriations Act, Senate Bill 1, Article III, Rider 46, 81st Texas Legislature, 2009, unless otherwise noted.

§89.21. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Adult education--Basic and secondary instruction and services for adults.
 - (A) Adult basic education--Instruction in reading, writing, English and solving quantitative problems, including functional context, designed for adults who:
 - (i) have minimal competence in reading, writing, and solving quantitative problems;
 - (ii) are not sufficiently competent to speak, read, or write the English language; or
 - (iii) are not sufficiently competent to meet the requirements of adult life in the United States, including employment commensurate with the adult's real ability.
 - (B) Adult secondary education--Comprehensive secondary instruction below the college credit level in reading, writing and literature, mathematics, science, and social studies, including functional context, and instruction for adults who do not have a high school diploma or its equivalent.
- (2) Base allocation--An amount of funds set aside for each grantee to provide adult basic education services to eligible adults within its service area in compliance with provisions of the grant application and the state's federally approved adult education plan.
- (3) Contact time--The cumulative sum of minutes during which an eligible adult student receives instructional, counseling, and/or assessment services by a staff member supported by federal and state adult education funds as documented by local attendance and reporting records.
 - (A) Student contact time generated by volunteers may be accrued by the adult education program when volunteer services are verifiable by attendance and reporting records and volunteers meet requirements under §89.25 of this title (relating to Qualifications and Training of Staff).
 - (B) Student contact hour is 60 minutes.
- (4) Cooperative/consortium adult education program--A community or area partnership of educational, work force development, and human service entities and other agencies that agree to collaborate for the provision of adult education and literacy services.
- (5) Eligible grant recipient--Eligible grant recipients for adult education programs are those entities specified in state and federal law.
- (6) Fiscal agent--The local entity that applies for, receives, and manages funds on behalf of the cooperative or adult education partnership.
- (7) Grantee--Recipient of award of federal and/or state adult education funds from the Texas Education Agency.
- (8) Performance definitions--
 - (A) Allocation--A performance allocation is an amount of funds set aside for each grantee from which it is eligible to withdraw funds once it has demonstrated that it has met or exceeded set performance targets.

- (B) Payment--A performance payment is a financial incentive awarded to grantees based on the number of performance points earned by meeting or exceeding identified federal and state performance targets.
- (C) Points--Performance points are the basis by which the grantee can earn performance payments. Performance points are earned by grantees by meeting or exceeding state and federal performance targets.
- (D) Target--A performance target is a quantifiable measurement that identifies the degree or extent to which grantees are expected to achieve performance measures.
 - (i) Federal targets--A quantifiable measurement assigned to individual federal performance measures set forth in the Texas plan for adult education approved by the United States Department of Education (USDE).
 - (ii) State targets--A quantifiable measurement assigned to individual state performance measures set forth in the Texas plan for adult education approved by the USDE.
- (9) Reallocation fund--Monies from grantee's performance allocations that grantees fail to earn because they did not achieve all federal performance targets that are placed in a fund to be distributed among grantees based on their performance on state performance measures.

Source: The provisions of this §89.21 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective September 1, 1999, 24 TexReg 386; amended to be effective December 25, 2006, 31 TexReg 10297; amended to be effective July 1, 2010, 35 TexReg 5556; amended to be effective February 28, 2013, 38 TexReg 1179.

§89.22. Use of Funds.

- (a) Federal adult education and literacy funds may be used for programs of adult education and literacy for out-of-school individuals who have attained 16 years of age and:
 - (1) function at less than a secondary school completion level;
 - (2) lack a secondary school credential; or
 - (3) are unable to speak, read, or write in English.
- (b) State adult education and literacy funds are to be used for programs of adult education and literacy for out-of-school individuals who are beyond compulsory school attendance age and:
 - (1) function at less than a secondary school completion level;
 - (2) lack a secondary school credential; or
 - (3) are unable to speak, read, or write in English.
- (c) The proportion of students served who meet the requirements of subsection (a) of this section but do not meet the requirements of subsection (b) of this section may not exceed the grantee's percentage of federal funds to the total allocation.

Source: The provisions of this §89.22 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective July 1, 2010, 35 TexReg 5556.

§89.23. Essential Program Components.

The following essential program components shall be provided:

- (1) adult basic education;
- (2) programs for adults of limited English proficiency;
- (3) adult secondary education, including programs leading to the achievement of a high school equivalency certificate and/or a high school diploma;

- (4) instructional services to improve student proficiencies necessary to function effectively in adult life, including accessing further education, employment-related training, or employment;
- (5) assessment and guidance services related to paragraphs (1)-(4) of this section; and
- (6) collaboration with multiple partners in the community to expand the services available to adult learners and to prevent duplication of services.

Source: The provisions of this §89.23 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective July 1, 2010, 35 TexReg 5556.

§89.24. Diploma Requirements.

The standards for the awarding of diplomas to adults shall be those established under Chapter 74 of this title (relating to Curriculum Requirements) with the following exceptions.

- (1) There shall be no limit to the number of secondary credits adults may earn by demonstration of competence.
- (2) Adults may earn the required physical education credits by one or more of the following:
 - (A) satisfactory completion of approved secondary physical education courses; or
 - (B) substitution of state-approved secondary elective courses.
- (3) Adults must meet the requirements for successful performance on a secondary level test designated by the commissioner of education.

Source: The provisions of this §89.24 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective September 1, 1999, 24 TexReg 386.

§89.25. Qualifications and Training of Staff.

The requirements of this section shall apply to all adult education staff hired after September 1, 1996, excluding clerical and janitorial staff.

- (1) All staff shall receive at least 12 clock hours of professional development annually.
- (2) All staff new to adult education shall receive six clock hours of preservice professional development before they begin work in an adult education program.
- (3) Aides shall have at least a high school diploma or high school equivalency certificate.
- (4) The following apply to directors, teachers, counselors, and supervisors.
 - (A) Persons must possess at least a bachelor's degree.
 - (B) Persons without valid Texas teacher certification must attend 12 clock hours of inservice professional development annually in addition to that specified in paragraph (1) of this section until they have completed either six clock hours of adult education college credit or attained two years of adult education experience.
- (5) The requirements for inservice professional development may be reduced by local programs in individual cases where exceptional circumstances prevent employees from completing the required hours of inservice professional development. Documentation shall be kept justifying such circumstances. Requests for exemption from staff qualification requirements in individual cases may be submitted to the Texas Education Agency (TEA) for approval in the application for funding and must include justification and proposed qualifications.
- (6) Records of staff qualifications and professional development shall be maintained by each fiscal agent and must be available for monitoring.

- (7) The requirements in paragraphs (1)-(5) of this section also apply to volunteers who generate student contact time, as defined under §89.21 of this title (relating to Definitions), which is accrued by the adult education program and reported to TEA for funding purposes.

Source: The provisions of this §89.25 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.26. Service Requirements for Staff.

Teachers and aides shall be assigned to instruction, counseling, and/or assessment for a minimum of 75% of the hours for which they are employed.

Source: The provisions of this §89.26 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.27. Program Delivery System.

- (a) There shall be a statewide system of adult education cooperatives/consortia for the coordinated provision of adult education services. To the extent possible, service delivery areas shall be large enough to support a program meeting the requirements of §89.23 of this title (relating to Essential Program Components) and to ensure efficient and effective delivery of services.
- (b) Eligible grant recipients may apply directly to the Texas Education Agency (TEA) for adult education and literacy funding. Eligible grant recipients are encouraged to maximize the fiscal resources available for service to undereducated adults and avoid unproductive duplication of services and excessive administrative costs by forming consortia or cooperatives and using fiscal agents for the delivery of services.
- (c) Grant applicants who will serve as a fiscal agent for a cooperative/consortium must consult with other adult education and literacy providers in the cooperative/consortium in developing applications for funding to be submitted to TEA.
- (d) Each fiscal agent shall be responsible for:
 - (1) the overall management of the cooperative/consortium, including technical assistance to consortium members, on-site visits, staff qualifications and professional development, and program implementation in accordance with the requirements of this subchapter;
 - (2) the employment of an administrator for the cooperative/consortium;
 - (3) development of written agreements with consortium members for the operation of the adult education program; and
 - (4) expenditures of funds for the conduct of the project and making and filing composite reports for the consortium.
- (e) Nonconsortium applicants must also provide evidence of coordination of existing adult education and literacy services in the area proposed to be served and maintain an advisory committee.

Source: The provisions of this §89.27 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.28. Advisory Committee.

At least one collaborative advisory committee shall be formed in each funded adult education service area. That committee shall be composed of a broad spectrum of community representatives, including work force development representatives, to review the activities of and make recommendations to the fiscal agent in planning, developing, and evaluating the adult education program. The fiscal agent shall be responsible for convening the collaborative advisory committee at least twice each year.

Source: The provisions of this §89.28 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective July 1, 2010, 35 TexReg 5556.

§89.30. Allocation of Funds Beginning with School Year 2010-2011 and Ending After School Year 2012-2013.

- (a) Allocation of state and federal funds. The provisions of this section apply to the allocation of state and federal adult education funds beginning with school year 2010-2011 and ending after school year 2012-2013. Annually, after federal adult education and literacy funds have been set aside for state administration, special projects, staff development, and leadership, state and federal adult education funds shall be allocated based upon grantees':
 - (1) funding received in the second year of the previous biennium; and
 - (2) proportionate share of need.
- (b) Total grantee allocation. Each grantee's total shall be comprised of the following components:
 - (1) base allocation; and
 - (2) performance allocation.
- (c) Calculation of base allocation. Each grantee will receive a base allocation equal to the amount of funding it received in the second year of the previous biennium, provided that:
 - (1) the grantee serves, at a minimum, the same or equivalent school district geographic areas as it served in the second year of the previous biennium; and
 - (2) the total amount of federal and state funds available statewide is equal to or greater than the amount available in the second year of the previous biennium.
- (d) Reduction of base allocation. If the calculation of the base allocation results in a total that is greater than the state and federal funds available, each grantee's base allocation shall be reduced proportionately.
- (e) Calculation of performance allocation. The sum of all grantees' base allocations, which are calculated based on subsection (c) of this section, will be subtracted from the total amount of federal and state funds available, excluding the amount of federal funds set aside for state administration, special projects, staff development, and leadership. The remainder then will be allocated among all grantees based upon need and will be designated as each grantee's performance allocation.
- (f) Future allocations. Beginning with school year 2013-2014, allocation of state and federal adult education funds shall be governed by §89.1301(d) of this title (relating to Service Provider Contracts for Adult Education Programs).

Source: The provisions of this §89.30 adopted to be effective July 1, 2010, 35 TexReg 5556; amended to be effective February 28, 2013, 38 TexReg 1179.

§89.31. Payment of Funds.

- (a) Base payments. Each grantee will receive its base allocation as calculated in accordance with §89.30(c) of this title (relating to Allocation of Funds Beginning with School Year 2010-2011 and Ending After School Year 2012-2013).
- (b) Performance payments. Each grantee may earn performance payments from:
 - (1) its performance allocation as calculated in accordance with §89.30(e) of this title by achieving federal performance targets; and
 - (2) the reallocation fund by achieving state performance targets.
- (c) Earning payments from a grantee's performance allocation. Each grantee is eligible to earn performance payments from its performance allocation by meeting or exceeding federal performance targets.
 - (1) For each federal performance target that the grantee meets or exceeds, the grantee will earn:
 - (A) one and one-half performance points for meeting or exceeding a target that advances students from the lowest literacy level for either adult basic education or English as a second language to the next literacy level; and

- (B) one performance point for meeting or exceeding all other targets.
- (2) The amount of funds that each grantee will receive from its performance allocation is calculated by adding the number of performance points the grantee earned and dividing it by the total number of performance points possible to earn and multiplying that number by 100. The resulting percentage of possible points earned is then multiplied by the amount of funds set aside in the grantee's performance allocation.
- (3) The amount of funds in each grantee's performance allocation that are not earned will be placed in a statewide reallocation fund.
- (d) Earning payments from the reallocation fund. All grantees, regardless of performance on the federal performance measures, will be eligible to earn funds from the reallocation fund by meeting or exceeding state performance targets for state performance measures.
 - (1) For each state performance target that a grantee meets or exceeds, the grantee will earn:
 - (A) one and one-half performance points for meeting or exceeding a target that advances students from the lowest literacy level for either adult basic education or English as a second language to the next literacy level; and
 - (B) one performance point for meeting or exceeding all other targets.
 - (2) The total number of performance points earned by all grantees will be summed and divided into the total amount of funds in the reallocation fund to determine a cost per state performance point earned.
 - (3) The amount of funds that each grantee will receive from the reallocation fund is calculated by adding the number of performance points the grantee earned for meeting or exceeding state performance targets and multiplying that number by the cost per state performance point earned.

Source: The provisions of this §89.31 adopted to be effective July 1, 2010, 35 TexReg 5556; amended to be effective February 28, 2013, 38 TexReg 1179.

§89.32. Match Requirements.

- (a) Service providers shall provide and document any cash or in-kind match. The match must be met using non-federal (i.e., local or state) sources.
- (b) The cash or in-kind match may be obtained from any state or local source that is fairly evaluated, excluding any sources of federal funds.
- (c) The match may include allowable costs such as the following:
 - (1) goods and services;
 - (2) fair market value of third-party goods and services donated by volunteers and employees or other organizations; and
 - (3) supplies, equipment, and building space not owned by the fiscal agent.
- (d) The grantee is required to maintain auditable records for all expenditures relating to the cash or in-kind match the same as for the funds granted through an approved application.
- (e) If public funds, other than state and federal adult education funds, are used in the adult education instructional program, the program may claim a proportionate share of the student contact time as the cash or in-kind match.

Source: The provisions of this §89.32 adopted to be effective July 1, 2010, 35 TexReg 5556.

§89.33. Tuition and Fees.

Tuition and fees may not be charged unless the entity charging them is statutorily authorized to do so. Funds generated by such tuition and fees shall be used for the adult education instructional programs.

Source: The provisions of this §89.33 adopted to be effective July 1, 2010, 35 TexReg 5556; amended to be effective February 28, 2013, 38 TexReg 1179.

§89.34. Other Provisions.

- (a) Allowable and nonallowable expenditures. Supervisory and administrative costs shall not exceed 25% of the total budget. These costs may include supervisory payroll costs, rental of administrative space, indirect costs, and clerical costs.
- (b) Staff development and special projects. From the federal funds set aside for state administration, special projects, staff development, and leadership, a portion of funds shall be used to provide training and professional development to organizations that are not currently receiving grants but are providing literacy services.
- (c) Evaluation of programs. The Texas Education Agency shall evaluate adult education programs based on the indicators of program quality for adult education.

Source: The provisions of this §89.34 adopted to be effective July 1, 2010, 35 TexReg 5556; amended to be effective February 28, 2013, 38 TexReg 1179.

§89.35. Revocation and Recovery of Funds.

- (a) The commissioner of education may revoke a grant award for the adult education grant program based on the following factors:
 - (1) noncompliance with application assurances and/or the provisions of this section;
 - (2) lack of program success as evidenced by progress reports and program data;
 - (3) failure to participate in data collection and audits;
 - (4) failure to meet performance standards specified in the application or in the Texas state plan for adult education approved by the U.S. Department of Education; or
 - (5) failure to provide accurate, timely, and complete information as required by the Texas Education Agency (TEA) to evaluate the effectiveness of the adult education program.
- (b) A decision by the commissioner and the TEA to revoke the grant award of an adult education program is final and may not be appealed.
- (c) The commissioner may audit the use of grant funds and may recover funds against any state provided funds.

Source: The provisions of this §89.35 adopted to be effective July 1, 2010, 35 TexReg 5556; amended to be effective February 28, 2013, 38 TexReg 1179.

Subchapter C. Texas Certificate of High School Equivalency

Statutory Authority: The provisions of this Subchapter C issued under the Texas Education Code, §7.111, unless otherwise noted.

§89.41. Policy.

The Texas Education Agency shall be the only agency in Texas authorized to issue a certificate of high school equivalency. Tests shall be administered by authorized contracted testing centers under applicable state law and rules of the State Board of Education.

Source: The provisions of this §89.41 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective December 11, 2011, 36 TexReg 8373.

§89.42. Official Testing Centers.

- (a) Entities eligible to serve as official testing centers include:
 - (1) an accredited school district;
 - (2) an institution of higher education;
 - (3) an education service center;
 - (4) a local workforce development board;
 - (5) a United States Department of Labor One-Stop Career Center;
 - (6) a United States Department of Labor Job Corps Center;
 - (7) a public or private correctional institution;
 - (8) a public or private technical institution or career preparation school;
 - (9) any other public or private postsecondary institution offering academic or technical education or vocational training under a certificate program or an associate degree program; and
 - (10) an independent, stand-alone testing center.
- (b) The appropriate official of an eligible entity desiring to provide the testing service to residents in the community must request approval from the Texas Education Agency (TEA) to apply for authorization from the authorized testing organization. If the need for a testing center in the location exists, the appropriate entity official, in writing, shall inform the state administrator appointed by the commissioner of education that the establishment of an official testing center is requested at that particular entity. The contract to operate a center shall be between the applicant entity and the authorized testing organization and its partners.
- (c) The authorization to function as an official testing center may be withdrawn by the TEA if the testing center is in violation of State Board of Education rules.
- (d) A testing center may administer the test by paper or computer, as appropriate, at the testing center to eligible candidates who are 16 years of age or older.

Source: The provisions of this §89.42 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective October 15, 2006, 31 TexReg 8361; amended to be effective December 11, 2011, 36 TexReg 8373; amended to be effective October 10, 2013, 38 TexReg 6914.

§89.43. Eligibility for a Texas Certificate of High School Equivalency.

- (a) An applicant for a certificate of high school equivalency shall meet the following requirements.
 - (1) Residence. The applicant must be a resident of Texas or a member of the United States armed forces stationed at a Texas installation.
 - (2) Age.

- (A) The applicant must be 18 years old.
- (B) An applicant who is 17 years of age is eligible with parental or guardian consent. An applicant who is 17 years of age must submit permission of the applicant's parent or guardian according to procedures established by the Texas Education Agency (TEA). An applicant who is 17 years of age and married, who has entered military service, who has been declared an adult by the court, or who has otherwise legally severed the child/parent relationship is not required to present parent or guardian permission to be tested.
- (C) An applicant who is at least 16 years of age may test if recommended by a public agency having supervision or custody under a court order. Recommendations must include the applicant's name and date of birth and must be submitted according to procedures established by the TEA by an official of the public agency having supervision or custody of the person under a court order. An applicant who is at least 16 years old may also test if:
 - (i) required to take the examination under a court order;
 - (ii) enrolled in a Job Corps training program under the Workforce Investment Act of 1998 (29 United States Code, §§2801 et seq.) and its subsequent amendments; or
 - (iii) enrolled in the Texas Military Department's Texas ChalleNGe Academy program.
- (3) Educational status. The applicant must not have received a high school diploma from an accredited high school in the United States. The applicant must not be enrolled in school, unless the applicant is enrolled in a High School Equivalency Program (HSEP) approved by the TEA. A student who is 17 years of age is eligible to test if the student is enrolled in an HSEP approved by the TEA. The student must comply with the provisions of the HSEP.
- (4) Minimum test scores. An applicant must achieve the appropriate minimum standard scores in effect at the time the applicant tested as established by the TEA or the designated test organization, as appropriate.
- (b) Verification that any person being tested meets the eligibility requirements in this section will be provided according to procedures established by the TEA.

Source: The provisions of this §89.43 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective September 1, 1999, 24 TexReg 386; amended to be effective April 18, 2002, 27 TexReg 3061; amended to be effective October 15, 2006, 31 TexReg 8361; amended to be effective December 11, 2011, 36 TexReg 8373; amended to be effective October 10, 2013, 38 TexReg 6914.

§89.44. Identification.

Test centers shall require each examinee to present a driver's license or Texas Department of Public Safety identification card, or a government issued identification card (both national and foreign), provided that the identification includes date of birth, photograph, address, and signature. The examinee must also meet the age, residency, and other requirements of this subchapter.

Source: The provisions of this §89.44 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective April 18, 2002, 27 TexReg 3061; amended to be effective December 11, 2011, 36 TexReg 8373.

§89.45. Retesting.

An examinee who fails to achieve a minimum passing score on one or more of the tests may retest on the tests he or she failed, except for instances in which the American Council on Education establishes that scores may not be combined across a General Educational Development test series, in which case the examinee must successfully complete the full battery of tests in a series. Each retest must be on a different form of the test.

Source: The provisions of this §89.45 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective April 18, 2002, 27 TexReg 3061; amended to be effective December 11, 2011, 36 TexReg 8373.

§89.46. Examinees with Disabilities.

- (a) An applicant with a physical disability who is unable to mark an answer sheet may be assisted by the chief examiner or proctor. The examinee must read the questions without assistance and indicate the answer for the proctor to mark.
- (b) An applicant who is unable to take the printed form of the test may be administered a taped version of the test upon written authorization of the Texas Education Agency. A request by the chief examiner must be accompanied by certification by a physician that verifies a medical diagnosis of the disability that renders the potential examinee unable to take the printed form of the test.
- (c) An applicant with a visual impairment may take the test in a Braille, large print, or taped version.

Source: The provisions of this §89.46 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective April 18, 2002, 27 TexReg 3061; amended to be effective December 11, 2011, 36 TexReg 8373.

§89.47. Issuance of the Certificate.

- (a) A nonrefundable fee of \$3.00 will be assessed for each individual test upon registration through December 31, 2013. A nonrefundable fee of \$3.75 will be assessed for each individual test upon registration beginning January 1, 2014. A permanent file shall be maintained for all certificates issued.
- (b) Duplicate certificates will be issued upon request from the client. The client is required to pay a nonrefundable fee of \$5.00 for each request for a duplicate certificate. An additional convenience fee of no more than \$2.00 per transaction shall be charged to cover the cost of printing certificates online.
- (c) The certificate of high school equivalency shall indicate the version of the test taken by the applicant.
- (d) The state administrator appointed by the commissioner of education may disapprove issuance of a certificate or may cancel a certificate under the following conditions:
 - (1) an applicant does not meet eligibility requirements under §89.43 of this title (relating to Eligibility for a Texas Certificate of High School Equivalency);
 - (2) the applicant in any way violates security of the restricted test material;
 - (3) the applicant presents fraudulent identification or is not who he or she purports to be;
 - (4) the applicant uses another person's certificate or test scores in an attempt to defraud; or
 - (5) the applicant willingly allows another person to use his or her certificate or test scores in an attempt to defraud.
- (e) In the case of nonissuance or cancellation of a certificate, the applicant shall be notified in writing by the testing entity that the certificate will not be issued or may be canceled. A decision by the state administrator appointed by the commissioner is final and may not be appealed.

Source: The provisions of this §89.47 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective September 1, 1999, 24 TexReg 386; amended to be effective April 18, 2002, 27 TexReg 3061; amended to be effective June 6, 2004, 29 TexReg 5343; amended to be effective October 15, 2006, 31 TexReg 8361; amended to be effective December 11, 2011, 36 TexReg 8373; amended to be effective October 10, 2013, 38 TexReg 6914.

Subchapter D. Special Education Services and Settings

Statutory Authority: The provisions of this Subchapter D issued under Texas Education Code, §§30.003(d) and (g), 30.004(b), and 42.151(e) and (g), unless otherwise noted.

§89.61. Contracting for Residential Educational Placements for Students with Disabilities.

- (a) Residential placement. A school district may contract for residential placement of a student when the student's admission, review, and dismissal (ARD) committee determines that a residential placement is necessary in order for the student to receive a free appropriate public education (FAPE).
 - (1) A school district may contract for a residential placement of a student only with either public or private residential facilities which maintain current and valid licensure by the Texas Department of Aging and Disability Services, Texas Department of Family and Protective Services, or Department of State Health Services for the particular disabling condition and age of the student. A school district may contract for an out-of-state residential placement in accordance with the provisions of subsection (c)(3) of this section.
 - (2) Subject to subsections (b) and (c) of this section, the district may contract with a residential facility to provide some or all of the special education services listed in the contracted student's individualized education program (IEP). If the facility provides any educational services listed in the student's IEP, the facility's education program must be approved by the commissioner of education in accordance with subsection (c) of this section.
 - (3) A school district which intends to contract for residential placement of a student with a residential facility under this section shall notify the Texas Education Agency (TEA) of its intent to contract for the residential placement through the residential application process described in subsection (b) of this section.
 - (4) The school district has the following responsibilities when making a residential placement.
 - (A) Before the school district places a student with a disability in, or refers a student to, a residential facility, the district shall initiate and conduct a meeting of the student's ARD committee to develop an IEP for the student in accordance with 34 Code of Federal Regulations, §§300.320-300.325, state statutes, and commissioner of education rules.
 - (B) For each student, the services which the school district is unable to provide and which the facility will provide shall be listed in the student's IEP.
 - (C) For each student, the ARD committee shall establish, in writing, criteria and estimated timelines for the student's return to the school district.
 - (D) The appropriateness of the facility for each student residentially placed shall be documented in the IEP. General screening by a regional education service center is not sufficient to meet the requirements of this subsection.
 - (E) The school district shall make an initial and an annual on-site visit to verify that the residential facility can, and will, provide the services listed in the student's IEP which the facility has agreed to provide to the student.
 - (F) For each student placed in a residential facility (both initial and continuing placements), the school district shall verify, during the initial residential placement ARD committee meeting and each subsequent annual ARD committee meeting, that:
 - (i) the facility meets minimum standards for health and safety;
 - (ii) residential placement is needed and is documented in the IEP; and
 - (iii) the educational program provided at the residential facility is appropriate and the placement is the least restrictive environment for the student.

- (G) The placement of more than one student, in the same residential facility, may be considered in the same on-site visit to a facility; however, the IEP of each student must be individually reviewed and a determination of appropriateness of placement and service must be made for each student.
 - (H) When a student who is residentially placed by a school district changes his residence to another Texas school district, and the student continues in the contracted placement, the school district which negotiated the contract shall be responsible for the residential contract for the remainder of the school year.
- (b) Application approval process. Requests for approval of state and federal funding for residentially placed students shall be negotiated on an individual student basis through a residential application submitted by the school district to the TEA.
 - (1) A residential application may be submitted for educational purposes only. The residential application shall not be approved if the application indicates that the:
 - (A) placement is due primarily to the student's medical problems;
 - (B) placement is due primarily to problems in the student's home;
 - (C) district does not have a plan, including timelines and criteria, for the student's return to the local school program;
 - (D) district did not attempt to implement lesser restrictive placements prior to residential placement (except in emergency situations as documented by the student's ARD committee);
 - (E) placement is not cost effective when compared with other alternative placements; and/or
 - (F) residential facility provides unfundable/unapprovable services.
 - (2) The residential placement, if approved by the TEA, shall be funded as follows:
 - (A) the education cost of residential contracts shall be funded with state funds on the same basis as nonpublic day school contract costs according to Texas Education Code, §42.151;
 - (B) related services and residential costs for residential contract students shall be funded from a combination of fund sources. After expending any other available funds, the district must expend its local tax share per average daily attendance and 25% of its Individuals with Disabilities Education Act, Part B, (IDEA-B) formula tentative entitlement (or an equivalent amount of state and/or local funds) for related services and residential costs. If this is not sufficient to cover all costs of the residential placement, the district through the residential application process may receive additional IDEA-B discretionary funds to pay the balance of the residential contract placement(s) costs; and
 - (C) funds generated by the formula for residential costs described in subsection (b)(2)(B) of this section shall not exceed the daily rate recommended by the Texas Department of Family and Protective Services for the specific level of care in which the student is placed.
- (c) Approval of the education program for facilities which provide educational services. Residential facilities which provide educational services must have their educational programs approved for contracting purposes by the commissioner of education.
 - (1) If the education program of a residential facility which is not approved by the commissioner of education is being considered for a residential placement by a local school district, the school district should notify the TEA in writing of its intent to place a student at the facility. The TEA shall begin approval procedures and conduct an on-site visit to the facility within 30 calendar days after the TEA has been notified by the local school district. Approval of the education program of a residential facility may be for one, two, or three years.

- (2) The commissioner of education shall renew approvals and issue new approvals only for those facilities which have contract students already placed or which have a pending request for residential placement from a school district. This approval does not apply to residential facilities which only provide related services or residential facilities in which the local accredited school district where the facility is located provides the educational program.
- (3) School districts which contract for out-of-state residential placement shall do so in accordance with the rules for in-state residential placement in this section, except that the facility must be approved by the appropriate agency in the state in which the facility is located, rather than by the commissioner of education in Texas.

Source: The provisions of this §89.61 adopted to be effective September 1, 2000, 25 TexReg 4530; amended to be effective August 24, 2010, 35 TexReg 7212.

§89.62. Support of Students Enrolled in the Texas School for the Blind and Visually Impaired and Texas School for the Deaf.

- (a) For each student enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf, the school district responsible for providing appropriate special education and related services to the student shall share the cost of the student's education (excluding the summer programs) as provided under the Texas Education Code, §30.003.
 - (1) The information required in accordance with the Texas Education Code, §30.003(d), must be submitted in a form prescribed by the commissioner of education within 30 calendar days after the student enrolls in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf.
 - (2) School districts required to remit their shares to the Texas Education Agency in accordance with the Texas Education Code, §30.003(d), shall do so within 60 days of notification by the commissioner of education.
- (b) School districts shall provide, annually, in writing to each parent or legal guardian of an eligible student with visual or auditory impairments, the information specified in the Texas Education Code, §30.004(a)(1-3), before considering the student's placement for special education services.

Source: The provisions of this §89.62 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.63. Instructional Arrangements and Settings.

- (a) Each local school district shall be able to provide services with special education personnel to students with disabilities in order to meet the special needs of those students in accordance with 34 Code of Federal Regulations, §§300.114-300.118.
- (b) Subject to §89.1075(e) of this title (relating to General Program Requirements and Local District Procedures) for the purpose of determining the student's instructional arrangement/setting, the regular school day is defined as the period of time determined appropriate by the admission, review, and dismissal (ARD) committee.
- (c) Instructional arrangements/settings shall be based on the individual needs and individualized education programs (IEPs) of eligible students receiving special education services and shall include the following.
 - (1) **Mainstream.** This instructional arrangement/setting is for providing special education and related services to a student in the regular classroom in accordance with the student's IEP. Qualified special education personnel must be involved in the implementation of the student's IEP through the provision of direct, indirect and/or support services to the student, and/or the student's regular classroom teacher(s) necessary to enrich the regular classroom and enable student success. The student's IEP must specify the services that will be provided by qualified special education personnel to enable the student to appropriately progress in the general education curriculum and/or appropriately advance in achieving the goals set out in the student's IEP. Examples of services provided in this instructional arrangement include, but are not limited to, direct

instruction, helping teacher, team teaching, co-teaching, interpreter, education aides, curricular or instructional modifications/accommodations, special materials/equipment, consultation with the student and his/her regular classroom teacher(s) regarding the student's progress in regular education classes, staff development, and reduction of ratio of students to instructional staff.

- (2) Homebound. This instructional arrangement/setting is for providing special education and related services to students who are served at home or hospital bedside.
 - (A) Students served on a homebound or hospital bedside basis are expected to be confined for a minimum of four consecutive weeks as documented by a physician licensed to practice in the United States. Homebound or hospital bedside instruction may, as provided by local district policy, also be provided to chronically ill students who are expected to be confined for any period of time totaling at least four weeks throughout the school year as documented by a physician licensed to practice in the United States. The student's ARD committee shall determine the amount of services to be provided to the student in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in subsection (b) of this section.
 - (B) Home instruction may also be used for services to infants and toddlers (birth through age 2) and young children (ages 3-5) when determined appropriate by the child's individualized family services plan (IFSP) committee or ARD committee. This arrangement/setting also applies to school districts described in Texas Education Code, §29.014.
- (3) Hospital class. This instructional arrangement/setting is for providing special education instruction in a classroom, in a hospital facility, or a residential care and treatment facility not operated by the school district. If the students residing in the facility are provided special education services outside the facility, they are considered to be served in the instructional arrangement in which they are placed and are not to be considered as in a hospital class.
- (4) Speech therapy. This instructional arrangement/setting is for providing speech therapy services whether in a regular education classroom or in a setting other than a regular education classroom. When the only special education or related service provided to a student is speech therapy, then this instructional arrangement may not be combined with any other instructional arrangement.
- (5) Resource room/services. This instructional arrangement/setting is for providing special education and related services to a student in a setting other than regular education for less than 50% of the regular school day.
- (6) Self-contained (mild, moderate, or severe) regular campus. This instructional arrangement/setting is for providing special education and related services to a student who is in a self-contained program for 50% or more of the regular school day on a regular school campus.
- (7) Off home campus. This instructional arrangement/setting is for providing special education and related services to the following, including students at South Texas Independent School District and Windham Independent School District:
 - (A) a student who is one of a group of students from more than one school district served in a single location when a free appropriate public education is not available in the respective sending district;
 - (B) a student whose instruction is provided by school district personnel in a facility (other than a nonpublic day school) not operated by a school district; or
 - (C) a student in a self-contained program at a separate campus operated by the school district that provides only special education and related services.
- (8) Nonpublic day school. This instructional arrangement/setting is for providing special education and related services to students through a contractual agreement with a nonpublic school for special education.

- (9) Vocational adjustment class/program. This instructional arrangement/setting is for providing special education and related services to a student who is placed on a job with regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP. This instructional arrangement/setting shall be used in conjunction with the student's individual transition plan and only after the school district's career and technology classes have been considered and determined inappropriate for the student.
- (10) Residential care and treatment facility (not school district resident). This instructional arrangement/setting is for providing special education instruction and related services to students who reside in care and treatment facilities and whose parents do not reside within the boundaries of the school district providing educational services to the students. In order to be considered in this arrangement, the services must be provided on a school district campus. If the instruction is provided at the facility, rather than on a school district campus, the instructional arrangement is considered to be the hospital class arrangement/setting rather than this instructional arrangement. Students with disabilities who reside in these facilities may be included in the average daily attendance of the district in the same way as all other students receiving special education.
- (11) State supported living center. This instructional arrangement/setting is for providing special education and related services to a student who resides at a state supported living center when the services are provided at the state supported living center location. If services are provided on a local school district campus, the student is considered to be served in the residential care and treatment facility arrangement/setting.
- (d) The appropriate instructional arrangement for students from birth through the age of two with visual and/or auditory impairments shall be determined in accordance with the IFSP, current attendance guidelines, and the agreement memorandum between the Texas Education Agency (TEA) and the Department of Assistive and Rehabilitative Services (DARS) Early Childhood Intervention (ECI) Services.
- (e) For nonpublic day school placements, the school district or shared service arrangement shall submit information to the TEA indicating the students' identification numbers, initial dates of placement, and the names of the facilities with which the school district or shared service arrangement is contracting. The school district or shared service arrangement shall not count contract students' average daily attendance as eligible. The TEA shall determine the number of contract students reported in full-time equivalents and pay state funds to the district according to the formula prescribed in law.
- (f) Other program options which may be considered for the delivery of special education and related services to a student may include the following:
 - (1) contracts with other school districts; and
 - (2) other program options as approved by the TEA.

Source: The provisions of this §89.63 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective September 1, 2000, 25 TexReg 4531; amended to be effective August 24, 2010, 35 TexReg 7212.