

The Texas Education Agency adopts an amendment to §89.1050, concerning the admission, review, and dismissal (ARD) committee. The amendment is adopted with changes to the proposed text as published in the April 14, 2023 issue of the *Texas Register* (48 TexReg 1946) and will be republished. The adopted amendment provides clarification regarding students who register in a new school district during the summer months, as well as students who transfer to a new district during the school year. Additionally, the adopted amendment clarifies the federal requirement to ensure that a parent who is unable to meaningfully participate in English is still able to understand the proceedings of the admission, review, and dismissal (ARD) committee and receives proper notice in the parent's native language or other mode of communication.

REASONED JUSTIFICATION: Section 89.1050 describes ARD committee requirements for a child who receives special education and related services.

The amendment to §89.1050 provides clarification based on requests from school districts regarding students who register in a new district during the summer months. Additionally, the amendment clarifies an ARD committee's duties when a parent is deaf or hard of hearing or whose native language is not English. Specifically, the following changes have been made.

The amendment removes an outdated cross reference to 34 Code of Federal Regulations (CFR), §300.18, in subsection (c)(2) and amends subsections (f) and (g) to require the school district to take action, including arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is a language other than English, to ensure parent understanding when a parent is unable to meaningfully participate in the ARD process. Based on public comment, the language in subsection (g) has been amended at adoption to require a district to take "all reasonable actions necessary" rather than "whatever action is necessary."

The amendment to subsection (j) clarifies ARD committee responsibilities when a student transfers to a new school district during the school year or registers in a new district during the summer months.

The amendment to subsection (j)(1) addresses requirements for a student who transfers within the state in the same school year with an individualized education program (IEP) in effect in the student's previous district. The proposed amendment would have changed the timeline for completing the requirements of 34 CFR, §300.323(e)(1) or (2), from 30 school days to 30 calendar days to align with the new definition of "verify" in subsection (j)(6). However, based on public comment, the timeline in subsection (j)(1) has been changed at adoption to 20 school days.

The amendment to subsection (j)(2) addresses a student who transfers from a district in another state in the same school year with an IEP in effect in the student's previous district. The proposed amendment would have changed the timeline for completing the requirements of 34 CFR, §300.323(f)(2), from 30 school days to 30 calendar days to align with the new definition of "verify" in subsection (j)(6). However, based on public comment, the timeline in subsection (j)(2) has been changed at adoption to 20 school days.

The amendment to subsection (j)(3) requires the new school district to take reasonable steps to obtain the student's previous records in a timely manner.

The amendment to subsection (j)(4) addresses a student who registers in a new district in the summer months. It requires the new school district to implement the IEP from the previous district if the parents or in- or out-of-state district verify the previous IEP before the new school year, and it also requires that the timelines in subsection (j)(1) and (2) apply to any student with an unverified eligibility for special education services before the start of the new school year.

New subsection (j)(5) addresses additional requirements for a student who transfers to a new school district during the summer months. If the new district wishes to convene an ARD committee meeting to consider revision to the student's IEP before the start of the school year, a new provision requires the district to determine if the student's parent will agree to waive the five school-day notice, and, if the parent agrees, to make every reasonable effort to hold the ARD meeting prior to the first day of the new school year.

New subsection (j)(6) adds a new definition of "verify" to mean that the new school district has received a copy of the student's IEP that was in effect in their previous district. Because of this specific definition, timelines associated

with developing, adopting, and implementing a new IEP for a student who transfers during the school year have been changed to 20 school days.

New subsection (j)(7) provides instruction for the new district awaiting verification to take reasonable steps, with the consultation of the student's parent, to provide comparable services received by the student in the previous district if the new district is aware of the student's placement.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began April 14, 2023, and ended May 15, 2023. Two public hearings to solicit testimony and input on the proposed amendment were held on April 26 and May 1, 2023, via Zoom. Following is a summary of the public comments received and agency responses.

Comment: A special education administrator commented that the proposed change in subsection (g) referencing the actions of a school district to take "whatever action is necessary" is extraordinary language that seems to require an unlimited scope of responsibilities on the district. The administrator recommended changing the language to reflect "reasonable actions" of the school district to ensure that parents understand the proceedings of the ARD committee.

Response: The agency agrees in part. While the agency can understand that the phrase "whatever action is necessary" may be interpreted as requiring district actions that may not be feasible, the agency has determined that stating solely "reasonable actions" does not adequately communicate the importance of taking all possible actions to ensure parent understanding. Therefore, the agency has amended subsection (g) at adoption to state that the district must take "all reasonable actions necessary" to ensure that the parent understands the meeting's proceedings.

Comment: Disability Rights Texas requested a sentence be added in subsection (g) to state that a parent must have the opportunity to review the new or revised required elements of a student's IEP in writing during the meeting.

Response: The agency disagrees that the rule should address a parent's opportunity to review new or revised required elements of a student's IEP in writing during an ARD meeting. However, the agency will review existing technical assistance resources to determine whether revisions should be made to those resources to include information about parent requests to view materials in writing at the ARD meeting, along with other parental participation best practices.

Comment: Eleven school district special education professionals and the Texas Association of School Psychologists (TASP) expressed concern with the proposed change from 30 school days to 30 calendar days in subsection (j)(1) and (2). One comment stated that 30 calendar days is not sufficient to complete a full individual and initial evaluation and develop an IEP for a student. Another comment stated that calendar days are interrupted by school holidays and that more time is needed due to an increased level of transfer students. An additional comment referenced that this change would require a district to make decisions on placement without seeing or working with a student and stressed that many staff will not be on contract during the summer.

Response: The agency agrees in part. Based on some of the comments received, the agency has revised subsection (j)(1) and (2) at adoption from the proposed 30 calendar days to 20 school days. In addition, the agency disagrees in part and provides the following clarification.

Federal regulations in 34 CFR, §300.323, drive the requirements for §89.1050(j). Section 300.323(a) reflects the requirement that a school district have an IEP in effect at the beginning of each school year for each child who receives special education services. Whereas §300.323(e) and (f) reflect the procedures required when a student transfers to a school district during the school year from an in- or out-of-state district, the federal regulations do not address the procedures required for students who enroll in a new district over the summer. However, §300.323(a) would apply. Section 89.1050(j) is written in part to address the required actions a school district must take when a student enrolls over the summer. To that end, the agency provides the following clarification.

If a student transfers to a Texas school district from another Texas school district during the school year, the provisions in 34 CFR, §300.323(e), would apply. Those provisions state that the new district must provide a free appropriate public education (FAPE) to the transfer student, including services comparable to those described in the child's IEP from the previous district, until the new district either (a) adopts the child's IEP from the previous

district, or (b) develops, adopts, and implements a new IEP. There is no set timeline defined in this provision of §300.323(e). The purpose of the proposed change from 30 school days to 30 calendar days was to align with the more specific definition of "verify" provided in the proposed rule.

If a student transfers to a Texas district from a district outside of Texas during the school year, the provisions in 34 CFR, § 300.323(f), would apply. The difference between a transfer from out of state versus within Texas is that the provision of FAPE and comparable services are effective until the new district (a) conducts an evaluation, and (b) develops, adopts, and implements a new IEP, if appropriate. While there is no set timeline defined in this provision of §300.323(f), if an evaluation is determined to be necessary, the evaluation timeline would align with the Texas requirement of having initial evaluations completed within 45 school days, with limited exceptions. The requirement to comply with the development, adoption, and implementation of the new IEP would then align with §300.323(c)(1) to have an ARD meeting within 30 calendar days from the completion date of the evaluation report. If the new district determines that an evaluation is not necessary, the purpose of the proposed change from 30 school days to 30 calendar days was to align with the more specific definition of "verify" provided in the proposed rule.

Procedures for ensuring the provision of FAPE to students with disabilities who enroll in a new district over the summer months are not contemplated in 34 CFR, §300.323.

Because the definition of "verify" requires actual receipt of a student's previous IEP, the agency proposed the change from 30 school days to 30 calendar days based on the premise that possession of the student's actual IEP, rather than informal verifications of special education services that were in place at the student's former district, would allow for a quicker turnaround for the required decision-making process. While the agency understands the importance of getting to know students well prior to determining whether to accept or revise a child's IEP that was in effect in a previous district, as well as determining whether an evaluation is necessary, the agency also must balance the need for expedient decisions in relation a student's necessary services. Waiting a full six-week period prior to making determinations, especially when the timeline does not begin until the new district has a copy of the student's IEP that was previously in effect, delays those expedient decisions. However, the agency acknowledges that calendar day references are difficult to account for in terms of school business. For these reasons, at adoption, the agency has revised subsections (j)(1) and (2) from the proposed 30 calendar days to 20 school days.

Comment: A licensed specialist in school psychology employed by a school district expressed that not considering students who enroll in a new district during the summer months as transfer students is unfair to children and their families.

Response: The agency disagrees. Procedures for students with disabilities who transfer from an in- or out-of-state district are addressed in 34 CFR, §300.323. Procedures for students with disabilities who enroll in a new district over the summer months are not. Therefore, §89.1050(j) is partly intended to address the requirement in §300.323(a) that IEPs must be developed and implemented at the beginning of the school year.

Comment: TASP commented that the proposed definition of "verify" should include both the student's evaluation and the student's IEP.

Response: The agency disagrees. While the agency acknowledges that having both the student's most recent IEP and evaluation would provide a school district with the most up-to-date and necessary information about the student's programming and needs, the agency has determined that a copy of the student's IEP that was in effect at the previous district is the most essential piece that would trigger the school district's obligations to comply with the requirements to provide the student FAPE. The agency notes that nothing prohibits the district from pursuing consent for an evaluation from the student's parent regardless of whether the district is in possession of the most recent evaluation.

Comment: TASP and a special education administrator expressed the need for the agency to provide guidance on what is meant by "reasonable steps" in proposed subsection (j)(7) in relation to providing comparable services while the district awaits verification (i.e., receipt of the IEP) of the student's eligibility for special education services. The special education administrator asked if using a similar form documenting the district's agreement to implement certain services, regardless of whether it is a student who transfers into the district during the school year or one who enrolls in a new district over the summer, would be appropriate.

Response: The agency provides the following clarification. If the new school district has been unable to verify the student's eligibility for special education services (i.e., has not received a copy of the student's most recent IEP), often the student's parent or the student's former district will informally acknowledge the student's receipt of certain special education services at the former district. To that end, a reasonable step of the new district would be to attempt to provide similar services to the information it was provided by the parent or the previous district. While the agency has no requirement to use a specific form, the steps to provide comparable services would apply regardless of when a student transferred or enrolled in a district, so a similar form for both circumstances seems acceptable.

Comment: A campus special education coordinator expressed that the proposed rule will drive educators from the profession and asked the agency to refrain from adopting it.

Response: This comment is outside the scope of the proposed rulemaking. However, the agency notes that the amendment to §89.1050 was proposed primarily based on requests from the field.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §29.001, which requires the agency to ensure that the statewide design for special education ensures that a free appropriate public education is available to all eligible students with a disability, including that individualized education programs (IEPs) are properly developed, implemented, and maintained in the least restrictive environment that is appropriate to meet the student's educational needs; 34 Code of Federal Regulations (CFR), §300.322, which requires actions to ensure that parents understand the proceedings of the IEP team meeting, including arranging for interpreters; and 34 CFR, §300.323, which requires an IEP to be in effect at the beginning of each school year for a child with a disability, with limited exception.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §29.001; and 34 Code of Federal Regulations, §300.322 and §300.323.

<rule>

§89.1050. The Admission, Review, and Dismissal Committee.

- (a) Each school district must establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full individual and initial evaluation is conducted pursuant to §89.1011 of this title (relating to Full Individual and Initial Evaluation). The ARD committee is the individualized education program (IEP) team defined in federal law and regulations, including, specifically, 34 Code of Federal Regulations (CFR), §300.321. The school district is responsible for all of the functions for which the IEP team is responsible under federal law and regulations and for which the ARD committee is responsible under state law, including the following:
- (1) 34 CFR, §§300.320-300.325, and Texas Education Code (TEC), §29.005 (individualized education programs);
 - (2) 34 CFR, §§300.145-300.147 (relating to placement of eligible students in private schools by a school district);
 - (3) 34 CFR, §§300.132, 300.138, and 300.139 (relating to the development and implementation of service plans for eligible students placed by parents in private school who have been designated to receive special education and related services);
 - (4) 34 CFR, §300.530 and §300.531, and TEC, §37.004 (disciplinary placement of students with disabilities);
 - (5) 34 CFR, §§300.302-300.306 (relating to evaluations, re-evaluations, and determination of eligibility);
 - (6) 34 CFR, §§300.114-300.117 (relating to least restrictive environment);
 - (7) TEC, §28.006 (Reading Diagnosis);

- (8) TEC, §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction);
 - (9) TEC, §28.0212 (Junior High or Middle School Personal Graduation Plan);
 - (10) TEC, §28.0213 (Intensive Program of Instruction);
 - (11) TEC, Chapter 29, Subchapter I (Programs for Students Who Are Deaf or Hard of Hearing);
 - (12) TEC, §30.002 (Education for Children with Visual Impairments);
 - (13) TEC, §30.003 (Support of Students Enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf);
 - (14) TEC, §33.081 (Extracurricular Activities);
 - (15) TEC, Chapter 39, Subchapter B (Assessment of Academic Skills); and
 - (16) TEC, §48.102 (Special Education).
- (b) For a student from birth through two years of age with a visual impairment or who is deaf or hard of hearing, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§300.320-300.324, and the memorandum of understanding between the Texas Education Agency and the Texas Health and Human Services Commission. For students three years of age and older, school districts must develop an IEP.
- (c) ARD committee membership.
- (1) ARD committees must include the following:
 - (A) the parents of the student;
 - (B) not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment) who must, to the extent practicable, be a teacher who is responsible for implementing a portion of the student's IEP;
 - (C) not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;
 - (D) a representative of the school district who:
 - (i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;
 - (ii) is knowledgeable about the general education curriculum; and
 - (iii) is knowledgeable about the availability of resources of the school district;
 - (E) an individual who can interpret the instructional implications of evaluation results, who may be a member of the committee described in subparagraphs (B)-(D) and (F) of this paragraph;
 - (F) at the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate;
 - (G) whenever appropriate, the student with a disability;
 - (H) to the extent appropriate, with the consent of the parents or a student who has reached the age of majority, a representative of any participating agency that is likely to be responsible for providing or paying for transition services;
 - (I) a representative from career and technical education (CTE), preferably the teacher, when considering initial or continued placement of a student in CTE; and

- (J) a professional staff member who is on the language proficiency assessment committee who may be a member of the committee described in subparagraphs (B) and (C) of this paragraph, if the student is identified as an English language learner.
- (2) The special education teacher or special education provider that participates in the ARD committee meeting must be appropriately certified or licensed as required by 34 CFR, §300.156.
- (3) If the student is:
 - (A) a student with a suspected or documented visual impairment, the ARD committee must include a teacher who is certified in the education of students with visual impairments;
 - (B) a student who is suspected or documented to be deaf or hard of hearing, the ARD committee must include a teacher who is certified in the education of students who are deaf or hard of hearing; or
 - (C) a student with suspected or documented deaf-blindness, the ARD committee must include a teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students who are deaf or hard of hearing.
- (4) An ARD committee member is not required to attend an ARD committee meeting if the conditions of either 34 CFR, §300.321(e)(1), regarding attendance, or 34 CFR, §300.321(e)(2), regarding excusal, have been met.
- (d) The school district must take steps to ensure that one or both parents are present at each ARD committee meeting or are afforded the opportunity to participate, including notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed upon time and place. Additionally, a school district must allow parents who cannot attend an ARD committee meeting to participate in the meeting through other methods such as through telephone calls or video conferencing. The school district must provide the parents with written notice of the ARD committee meeting that meets the requirements in 34 CFR, §300.322, at least five school days before the meeting unless the parents agree to a shorter timeframe.
- (e) Upon receipt of a written request for an ARD committee meeting from a parent, the school district must:
 - (1) schedule and convene a meeting in accordance with the procedures in subsection (d) of this section; or
 - (2) within five school days, provide the parent with written notice explaining why the district refuses to convene a meeting.
- (f) The school district must provide the parent with a written notice required under subsection (d) or (e)(2) of this section in the parent's native language, unless it is clearly not feasible to do so. If the parent's native language is not a written language, the school district must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication so that the parent understands the content of the notice.
- (g) All members of the ARD committee must have the opportunity to participate in a collaborative manner in developing the IEP. The school district must take all reasonable actions necessary to ensure that the parent understands the proceedings of the ARD committee meeting, including arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is a language other than English. A decision of the ARD committee concerning required elements of the IEP must be made by mutual agreement if possible. The ARD committee may agree to an annual IEP or an IEP of shorter duration.
 - (1) When mutual agreement about all required elements of the IEP is not achieved, the parent who disagrees must be offered a single opportunity to recess and reconvene the ARD committee meeting. The period of time for reconvening the ARD committee meeting must not exceed ten school days, unless the parties mutually agree otherwise. The ARD committee must schedule the reconvened meeting at a mutually agreed upon time and place. The opportunity to recess and reconvene is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense that may lead to a placement in a disciplinary alternative education program. The

requirements of this subsection do not prohibit the ARD committee from recessing an ARD committee meeting for reasons other than the failure to reach mutual agreement about all required elements of an IEP.

- (2) During the recess, the ARD committee members must consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the ARD committee to reach mutual agreement.
 - (3) If a recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the school district must implement the IEP that it has determined to be appropriate for the student.
 - (4) Each member of the ARD committee who disagrees with the IEP developed by the ARD committee is entitled to include a statement of disagreement in the IEP.
- (h) Whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education to the student, the school district must provide prior written notice as required in 34 CFR, §300.503, including providing the notice in the parent's native language or other mode of communication. This notice must be provided to the parent at least five school days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.
- (i) If the student's parent is unable to speak English and the parent's native language is Spanish, the school district must provide a written copy or audio recording of the student's IEP translated into Spanish. If the student's parent is unable to speak English and the parent's native language is a language other than Spanish, the school district must make a good faith effort to provide a written copy or audio recording of the student's IEP translated into the parent's native language.
- (1) For purposes of this subsection, a written copy of the student's IEP translated into Spanish or the parent's native language means that all of the text in the student's IEP in English is accurately translated into the target language in written form. The IEP translated into the target language must be a comparable rendition of the IEP in English and not a partial translation or summary of the IEP in English.
 - (2) For purposes of this subsection, an audio recording of the student's IEP translated into Spanish or the parent's native language means that all of the content in the student's IEP in English is orally translated into the target language and recorded with an audio device. A school district is not prohibited from providing the parent with an audio recording of an ARD committee meeting at which the parent was assisted by an interpreter as long as the audio recording provided to the parent contains an oral translation into the target language of all of the content in the student's IEP in English.
 - (3) If a parent's native language is not a written language, the school district must take steps to ensure that the student's IEP is translated orally or by other means to the parent in his or her native language or other mode of communication.
 - (4) Under 34 CFR, §300.322(f), a school district must give a parent a written copy of the student's IEP at no cost to the parent. A school district meets this requirement by providing a parent with a written copy of the student's IEP in English or by providing a parent with a written translation of the student's IEP in the parent's native language in accordance with paragraph (1) of this subsection.
- (j) A school district must comply with the following for a student who is new to the school district.
- (1) When a student transfers to a new school district within the state in the same school year and the parents or previous school district verifies that the student had an IEP that was in effect in the previous district, the new school district must meet the requirements of 34 CFR, §300.323(e), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §300.323(e)(1) or (2), is 20 school days from the date the student is verified as being a student eligible for special education services.

- (2) When a student transfers from a school district in another state in the same school year and the parents or previous school district verifies that the student had an IEP that was in effect in the previous district, the new school district must meet the requirements of 34 CFR, §300.323(f), regarding the provision of special education services. If the new school district determines that an evaluation is necessary, the evaluation is considered a full individual and initial evaluation and must be completed within the timelines established by §89.1011(c) and (e) of this title. The timeline for completing the requirements in 34 CFR, §300.323(f)(2), if appropriate, is 30 calendar days from the date of the completion of the evaluation report. If the school district determines that an evaluation is not necessary, the timeline for completing the requirements outlined in 34 CFR, §300.323(f)(2), is 20 school days from the date the student is verified as being a student eligible for special education services.
 - (3) In accordance with 34 CFR, §300.323(g), the new school district must take reasonable steps to promptly obtain the student's records from the previous school district, and, in accordance with TEC, §25.002, and 34 CFR, §300.323(g), the previous school district must furnish the new school district with a copy of the student's records, including the student's special education records, not later than the 10th working day after the date a request for the information is received by the previous school district.
 - (4) A student who registers in a new school district during the summer is not considered a transfer student for the purposes of this subsection or for 34 CFR, §300.323(e) or (f). For these students, if the parents or in- or out-of-state school district verifies before the new school year begins that the student had an IEP that was in effect in the previous district, the new school district must implement the IEP from the previous school district in full on the first day of class of the new school year or must convene an ARD committee meeting during the summer to revise the student's IEP for implementation on the first day of class of the new school year. If the student's eligibility for special education and related services cannot be verified before the start of the new school year, the timelines in paragraphs (1) and (2) of this subsection apply to the student.
 - (5) In the case of a student described by paragraph (4) of this subsection, if the new district wishes to convene an ARD committee meeting to consider revision to the student's IEP before the beginning of the school year, the new district must determine whether the parent will agree to waive the requirement in subsection (d) of this section that the written notice of the ARD committee meeting must be provided at least five school days before the meeting. If the parent agrees to a shorter timeframe, the new district must make every reasonable effort to hold the ARD committee meeting prior to the first day of the new school year if the parent agrees to the meeting time.
 - (6) For the purposes of this subsection, "verify" means that the new school district has received a copy of the student's IEP that was in effect in the previous district.
 - (7) While the new school district waits for verification, the new school district must take reasonable steps to provide, in consultation with the student's parents, services comparable to those the student received from the previous district if the new school district has been informed by the previous school district of the student's special education and related services and placement.
- (k) All disciplinary actions regarding students with disabilities must be determined in accordance with 34 CFR, §§300.101(a) and 300.530-300.536; TEC, Chapter 37, Subchapter A; and §89.1053 of this title (relating to Procedures for Use of Restraint and Time-Out). If a school district takes a disciplinary action regarding a student with a disability who receives special education services that constitutes a change in placement under federal law, the district shall:
- (1) not later than the 10th school day after the change in placement:
 - (A) seek consent from the student's parent or person standing in parental relation to the student to conduct a functional behavioral assessment of the student if a functional behavioral assessment has never been conducted on the student or the student's most recent functional behavioral assessment is more than one year old; and

- (B) review any previously conducted functional behavioral assessment of the student and any behavior improvement plan or behavioral intervention plan developed for the student based on that assessment; and
- (2) as necessary:
- (A) develop a behavior improvement plan or behavioral intervention plan for the student if the student does not have a plan; or
 - (B) if the student has a behavior improvement plan or behavioral intervention plan, revise the student's plan.