

The Texas Education Agency (TEA) adopts amendments to §§89.1011, 89.1040, 89.1050, 89.1055, and 89.1131, concerning clarification of special education provisions in federal regulations and state law and special education and related service personnel. The amendments are adopted with changes to the proposed text as published in the March 22, 2024 issue of the *Texas Register* (49 TexReg 1820) and will be republished. The adopted amendments implement House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023, and codify current program practices. Changes were made to the rules since published as proposed.

REASONED JUSTIFICATION: Section 89.1011 defines the criteria for school districts conducting full individual and initial evaluations (FIEs) to determine eligibility for special education and related services.

Changes adopted throughout §89.1011 clarify the evaluation process and address HB 3928, 88th Texas Legislature, Regular Session, 2023.

The adopted amendment to §89.1011(a) clarifies terms and establishes one new expectation. The adopted amendment includes using the term "multi-tiered system of academic and behavioral supports" in place of an overall referral or screening system and aligns terms and text style within the subsection.

Based on public comment, subsection (a) has been changed at adoption to strengthen clarification that school districts cannot require participation in intervention for a certain period of time and retain the language "experience difficulty in the general education classroom." Also based on public comment, a requirement to refer a student at any time for an FIE if district personnel suspect a disability and possible need for special education and related services was added. A new requirement has been added that a student must continue to receive any necessary interventions and support services while an FIE is being conducted, which has been standard practice.

The Texas Education Code (TEC) requires a school district to respond in a certain way when a parent submits a written request to the district's director of special education services or to a district administrative employee. Section 89.1011(b) has been modified to add campus principals as examples of district administrative employees. The Overview of Special Education for Parents form was created by TEA to comply with HB 3928. While the form is only required by law for suspicions of dyslexia, the adopted amendment to §89.1011(b)(1) and (2) adds this requirement for suspicions of any disability.

New §89.1011(c) establishes what is required when a school district initiates the referral for an FIE of a student.

Information from §89.1011(d) has been removed, as new subsection (g) addresses the same topic.

TEC, §29.004, outlines the timeline for the completion of FIEs. Section 89.1011(e) has been amended to more clearly describe the requirements of state law when parental consent is received less than 45 school days before the last instructional day of the school year.

New §89.1011(g) establishes timelines for the admission, review, and dismissal (ARD) committee to make decisions regarding a student's eligibility determination and, if appropriate, an individualized education program (IEP) and placement within 30 calendar days of the completed FIE report. The adopted amendment also specifies that if the 30th day falls in the summer when school is not in session, the ARD committee must meet no later than the 15th day of school the next school year. If extended school year services are indicated as a need in a report, however, the ARD committee will need to meet as soon as possible after completion of the report.

Based on public comment, new §89.1011(h) has been changed at adoption. As proposed, the subsection established that a copy of the written FIE report must be provided to the parent no later than when the initial ARD committee invitation is sent to the parent, or no later than June 30 if subsection (e)(1) of the section applies. The modified language requires a copy of the written FIE report be provided to the parent as soon as possible after completion of the report but no later than five school days prior to the initial ARD committee meeting, or no later than June 30 if subsection (e)(1) of the section applies.

Section 89.1011(i) establishes the meaning of a school day for year-round schools, as authorized under TEC, §29.004.

The adopted amendment to §89.1011(j) clarifies that student absences are those categorized as absences under the *Student Attendance Accounting Handbook*.

Section 89.1040 establishes eligibility criteria.

Changes are adopted throughout §89.1040 for clarification and to align more closely with law.

Section 89.1040(c)(1), regarding autism eligibility, has been amended to remove references to pervasive developmental disorder, as this diagnosis is no longer used, and update the areas of recommendations that an evaluation report contains.

Based on public comment, §89.1040(c)(1) has been changed at adoption to add that a determination of whether a student meets the criteria for autism cannot require the student to meet requirements for a medical/psychological diagnosis of autism and that the absence of other characteristics often associated with autism, as listed in 34 Code of Federal Regulations (CFR), §300.8(c)(1), does not exclude a student from meeting eligibility. Also based on public comment, the term "positive" has been added at adoption to modify behavioral interventions and strategies.

Based on the receipt of a petition to adopt a rule change, §89.1040(c)(3)(A) has been amended to remove the eligibility requirement for deaf or hard of hearing to include an ontological examination performed by an otolaryngologist. In addition, the subsection amended to include the completion of a communication assessment to align with current practice. Based on public comment, the term amplification was changed at adoption to "hearing assistive technology."

In 26 Texas Administrative Code (TAC) §350.809, regarding eligibility for early childhood intervention (ECI) services, the rule states that a child is eligible for ECI if he or she meets the criteria for deaf or hard of hearing as defined in §89.1040. Because §89.1040(c)(3) reflects the definition used in the Individuals with Disabilities Education Act (IDEA), Part B, for children age three and older, rather than Part C for those under the age of three, and because children under the age of three who are deaf or hard of hearing or who have a visual impairment are eligible for state special education funding, §89.1040(c)(3)(B) has been amended to reference when a child under the age of three can be determined eligible by a local educational agency (LEA) for the deaf or hard of hearing eligibility category. Based on public comment, §89.1040(c)(3)(B) has been changed at adoption to more closely align with IDEA, Part C, eligibility criteria of infant or toddler with disability.

Based on requests from various stakeholders, the name of the emotional disturbance disability category was proposed to change to emotional/behavioral disability. Based on public comment, the name has been changed at adoption to emotional disability and changes to the name have been made throughout.

Adopted language also specifies that emotional disability is considered synonymous with the term emotional disturbance and serious emotional disturbance, as those terms are used in federal and state law.

Section 89.1040(c)(6), regarding multiple disabilities, has been amended to align with the definition more closely in federal law.

In the eligibility categories of orthopedic impairment in §89.1040(c)(7), other health impairment in §89.1040(c)(8), and traumatic brain injury in §89.1040(c)(11), the proposed amendment referenced the requirement for certain medical professionals to provide information, rather than be an official part of the multidisciplinary team. Based on public comment, the sentences have been restructured at adoption and, for orthopedic impairment and traumatic brain injury, the eligibilities must include a medical diagnosis provided by a licensed physician. A student's eligibility for other health impairment must include identification or confirmation of the student's chronic or acute health problem provided by the listed medical professionals.

Section 89.1040(c)(9), regarding eligibility as a student with a specific learning disability, is amended based on both HB 3928 and for clarification. The changes include the following. Repeated performance on progress monitoring measures have been added as another example of a measure that can be reviewed to determine if a student is achieving adequately. Language has been added that written expression may include the identification of dysgraphia, and basic reading skill and reading fluency skills may include the identification of dyslexia.

Clarification has been added that a significant variance among specific areas of cognitive function or between specific areas of cognitive function and academic achievement is not a requirement for determining the presence of a specific learning disability. New subparagraph (G) has been added to address specific requirements related to suspicions and identification of dyslexia or dysgraphia. Based on public comment, changes have been made at adoption to include current terminology referencing a general education teacher rather than regular teacher and reword §89.1040(c)(9)(G)(i) to "when the specific learning disability of dyslexia is suspected."

Based on public comment, proposed revisions to add the statutory requirement of the expanded core curriculum in §89.1040(c)(12), regarding visual impairment, are removed at adoption. TEA has determined that more technical assistance needs to be provided on this topic before adding it to rule.

Section 89.1040(c)(12) has been revised to remove redundant information about orientation and mobility specialists, as these specialists must be certified and part of the team as required by statute and it is unnecessary to repeat this requirement in administrative rule. In 26 TAC §350.809, regarding eligibility for ECI services, the rule states that a child is eligible for ECI if he or she meets the criteria for a visual impairment as defined in §89.1040. Because §89.1040(c)(12)(A) reflects the definition used in IDEA, Part B, for children age three and older, rather than Part C for those under the age of three, and because children under the age of three who are deaf or hard of hearing or who have a visual impairment are eligible for state special education funding, §89.1040(c)(12)(C) has been amended to reference when a child under the age of three can be determined eligible by an LEA for the visual impairment eligibility category. Based on public comment, §89.1040(c)(12)(C) has been changed at adoption to be applicable to a child under three to more closely mirror the IDEA, Part C, definition of infant or toddler with a disability.

IDEA and its corresponding federal regulations allow states to use the disability category of developmental delay. If states choose to use this category, they may not require LEAs to use it. However, if an LEA uses this category, the LEA must comply with the eligibility requirements set by the state. Texas has historically not used the eligibility category of developmental delay but has used a category called "noncategorical," also known as "noncategorical early childhood." This is defined as a child between the ages of three and five who is evaluated as having an intellectual disability, an emotional disturbance, a specific learning disability, or autism. The adopted amendment adds new §89.1040(c)(13) to officially establish the state's definition of developmental delay and prescribe how LEAs will use this eligibility category should they choose to do so. A transition period is included with the amendment to phase out the category of noncategorical. Based on public comment, the age ranges have been changed at adoption from 3-5 to 3-9.

Section 89.1050 describes roles and duties of the ARD committee.

Section 89.1050(a) is amended to add TEC, §37.004 and §37.307, to reflect duties for which the ARD committee is responsible.

An adopted amendment to §89.1050(c), regarding committee membership, includes the addition of a cross reference to federal regulations for the definition of parent and clarifications regarding current terminology.

Based on public comment, a new subparagraph (D) has been added to §89.1050(c)(3) at adoption to include criteria for an ARD committee determining initial or continuing eligibility of a student who is suspected or identified with dyslexia.

Section 89.1050(g), (i), and (j) have been removed and included, with changes, in §89.1055, where those provisions are more appropriately addressed.

Section 89.1050(k) has been removed, as the subsection restates law and is unnecessary to repeat in administrative rule.

Section 89.1055 addresses the content of the IEP. To better align with the provisions included in this rule, the title has been changed to Individualized Education Program.

Section 89.1055(a) has been amended to include a reference to TEC, §29.0051, to clarify that an IEP must also contain any state-imposed requirements in addition to the federal requirements that are already listed.

To align with how TEA monitors IEP compliance, new §89.1055(b) addresses how TEA will determine if a measurable annual goal is present in an IEP. The new subsection also includes information regarding when short-term objectives/benchmarks are required and how those relate to annual goals.

New §89.1055(d) requires the inclusion of TEA's alternate assessment participation form in a student's IEP to comply with the required statements when an ARD committee has determined that a student will not participate in the general statewide assessment. Based on public comment §89.1055(c) and (d) were reorganized at adoption so that the alternate participation form is more closely aligned with the alternate eligibility statement.

Amendments to §89.1055(g) clarify expectations and terminology within the autism supplement. Based on public comment, the phrase "at least annually" was added to §89.1055(g) at adoption and the phrase "is implemented and reviewed in accordance with subsection (j)" was added to subsection (g)(4)(B). Additionally, the phrases "learning and training" and "including self-determination and self-advocacy skills" was added at adoption to subsection (g)(5).

Based on public comment, new §89.1055(i) has been added at adoption to require that IEP's for students identified with the specific learning disability of dyslexia or a related disorder be developed and implemented in accordance with the requirements under 19 TAC §74.28, Students with Dyslexia and Related Disorders, including any handbook adopted in the rule.

Based on requests from stakeholders to clarify the expectations related to the state transition requirements found in TEC, §29.011 and §29.0111, that begin at 14 years of age and the federal requirements for transition that begin no later than 16 years of age, TEA has aligned all transition requirements with 14 years of age as authorized in TEC, §29.011 and §29.0111. The following changes to §89.1055 address the alignment. References have been removed from subsection (k) to reflect a student being at least 18 years of age and added to another subsection so that subsection (k) is focused on the requirements that happen not later than the first IEP to take effect when the student turns 14 years of age. Employment and independent living goals and objectives have been removed from subsection (k). Although these are listed as state transition requirements, they are already adequately addressed in the federal requirements. New subsection (l) address the federal transition requirements and align those requirements to begin no later than the first IEP to be in effect when the student turns 14 years of age. Subsections (k) and (l) are separated because state requirements in TEC, §29.011, require these areas to be "considered and addressed, if appropriate," and the federal requirements described in subsection (l) require them to be included in a student's IEP. New subsection (m) clarifies that state requirements for employment and independent living goals and objectives will be addressed within the goals required under subsection (l). Subsection (n) has been modified to include the required provisions that apply once a student is 18. New subsection (o) has been added to address the requirement for the ARD committee to review certain issues at least annually. The language is similar to an existing requirement and is being moved from a subsection proposed for deletion to allow this requirement to be organized with transition requirements.

New §89.1055(p), and addresses the requirements for all members of the ARD committee to participate in a collaborative manner, adds language from §89.1050 with no changes to rule text.

New §89.1055(r), which addresses the requirements for translations of student IEPs, adds language from §89.1050 with no changes to rule text.

New §89.1055(s) adds modified language from §89.1050. Clarifications have been made related to students who transfer to a new school district from an in-state or out-of-state district. In addition, based on recent federal guidance on serving students who are highly mobile, additional text regarding extended school year services being considered a comparable service has been added. Within this same guidance, students who registered in new districts over the summer months are viewed the same as students who transferred during the school year. To reflect that guidance, changes clarify that school districts will follow the same processes for students who register in the summer as those who transfer during the school year, depending on whether the student is coming from an in-state or out-of-state district.

Section 89.1131 establishes qualifications of special education, related service, and paraprofessional personnel.

New §89.1131(b) establishes that a provider of dyslexia instruction is not required to be certified in special education unless employed in a special education position requiring certification.

Language related to the special education endorsement for early childhood education for students with disabilities has been removed as the endorsement is no longer issued.

Section 89.1131(c)(4) clarifies the provisions for physical education when an ARD committee has determined that a student needs specially designed instruction in physical education.

Language related to secondary certification with the generic delivery system has been removed as the certification is no longer issued.

Based on public comment, the phrase "working as educational aides" was added to §89.1131(d) at adoption to clarify the terms paraprofessional personnel and educational aides.

Section 89.1131(e) has been modified to delete references to the Department of Assistive and Rehabilitative Services (DARS) or Office for Deaf and Hard of Hearing Services (DHHS), as this department and office have been consolidated into the Health and Human Services Commission.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began March 22, 2024, and ended April 22, 2024, and included public hearings on April 8 and 10, 2024. Following is a summary of the public comments received and agency responses.

§89.1011, Full Individual and Initial Evaluation

Comment: Disability Rights Texas (DRTx) and Texans for Special Education Reform (TxSER) commented that subsection (a) should retain the text regarding a general education referral and screening system.

Response: The agency disagrees. The text replacing this phrase is a more accurate and comprehensive description of the supports that need to be in place for all students, which would include referrals and screenings where necessary and appropriate.

Comment: DRTx and TxSER commented that the text referencing continued difficulty in the general classroom should be retained.

Response: The agency agrees that the proposed replacement text regarding not making expected progress may be misinterpreted. At adoption, the proposed text has been replaced with similar language that was previously in place referring to a student who continues to "experience difficulty in the general education classroom."

Comment: TxSER commented that the terminology around not requiring a student to participate in interventions and supports for a certain period of time should be written more affirmatively.

Response: The agency agrees and has changed the text in subsection (a) at adoption to reference that the school district cannot require a student to participate in interventions and support services for any specific length of time prior to a referral being made or an FIIE conducted.

Comment: TxSER commented that the end of subsection (a) referring to the continuation of interventions and support services while an FIIE is being conducted be changed to "academic or educational needs" rather than "academic or behavioral needs."

Response: The agency disagrees since academic and behavioral supports are referred to earlier in the subsection.

Comment: The Arc of Texas supports the clarification that students must continue to receive any necessary interventions and support services to target their academic or behavioral needs while an FIIE is being conducted.

Response: The agency agrees.

Comment: An individual commented that subsection (a) should contain a reference to the two prongs of special education when a referral is being considered, which are the suspicion of a disability and the need for special education and related services.

Response: The agency agrees but stresses that these prongs of referral consideration and eligibility apply regardless of them being included in the rule. However, for clarity, at adoption, subsection (a) has been modified to reflect that a referral is required at any time district personnel suspect a disability and a possible need for special education and related services.

Comment: The Texas Council of Administrators of Special Education (TCASE) commented that it was unclear whether the mention of "multi-tiered system of academic and behavioral supports" is different from the general term multi-tiered system of supports and suggested keeping terminology that districts are used to.

Response: The agency disagrees and provides the following clarification. The terms are the same, but the agency has determined that it is important to clarify in rule that this system of support includes both academic and behavioral difficulties.

Comment: TxSER and one individual commented in support of adding an example of district personnel to whom a request for evaluation can be submitted in subsection (b).

Response: The agency agrees.

Comment: The Arc of Texas commented in support of the "Overview of Special Education for Parents" form being given to parents once a request or referral is made for a special education evaluation.

Response: The agency agrees.

Comment: Seven individuals and TCASE commented in support of the change to allow up to 15 school days to hold an initial ARD committee meeting when the 30th calendar day falls in the summer.

Response: The agency agrees.

Comment: TxSER, DRTx, and Autism Speaks disagreed with the change to allow for 15 school days to hold an initial admission, review, and dismissal (ARD) committee meeting if a referral for special education was made between 35 and 45 days of school remaining in the school year but the student incurred three or more absences during this time. The commenters recommended keeping the requirement to have the ARD meeting by the beginning of the year.

Response: The agency disagrees. While the agency believes that the initial ARD committee meeting should be held as soon as possible, the agency disagrees with keeping the requirement to hold the ARD committee meeting by the beginning of the school year, noting that local education agencies (LEAs) have a five-school-day notice requirement, which cannot be accomplished with a requirement to hold a meeting by the beginning of the school year without a parent waiving that required notice.

Comment: TxSER supported the requirement to give a copy of the evaluation report to parents earlier than the ARD committee.

Response: The agency disagrees, as, based on other public comments, the agency has revised the text to change this requirement at adoption .

Comment: The Texas Association of School Psychologists (TASP), TCASE, and 108 individuals commented that the proposed amendment to require a copy of the evaluation report be given to parents no later than when the initial ARD committee meeting invitation is sent would be difficult to implement, with the primary reason being that those notices/invitations go out well in advance of an evaluation report being completed.

Response: The agency agrees and has revised subsection (h) at adoption to require that a copy of the evaluation report be given to parents as soon as possible after completion but no later than five school days prior to the initial ARD committee meeting.

Comment: One individual requested that the agency mandate verbal explanations of the evaluation report to parents.

Response: The agency disagrees. While the agency agrees that an explanation by the evaluator to parents is extremely important, the agency disagrees that this is necessary to add to the rule.

Comment: Three individuals commented in support of providing a parent a copy of the written FIIE no later than when the initial ARD committee invitation is sent or no later than June 30, if applicable.

Response: The agency provides the following clarification. Based on other public comment, §89.1011(h) was modified at adoption to specify that a copy of the written FIIE report must be provided to the parent as soon as possible after completion of the report but no later than five school days prior to the initial ARD committee meeting, or not later than June 30.

Comment: One individual commented that evaluations due on June 30 should not be required to be given to parents until after that date.

Response: The agency disagrees. State law requires that both the evaluation and a copy of the report be given to parents by June 30 in these circumstances.

Comment: An administrator asked for clarification about how to determine absences in relation to subsection (j).

Response: The comment is outside the scope of the proposed rulemaking, but the agency will determine what technical assistance is required once the rules are in effect.

Comment: The Arc of Texas recommended that a referral to the local intellectual and developmental disability authority be made when an FIIE finding of intellectual disability is written.

Response: The agency disagrees, as this change would require additional time for public comment. Text will not be added at this time regarding this type of referral.

§89.1040, Eligibility Criteria

Comment: TASP and 62 individuals commented in support of incorporating the term "school psychologist" where licensed specialist in school psychology is mentioned.

Response: The agency agrees.

Comment: Twenty-two individuals commented in support of removing references to pervasive developmental disorder regarding autism eligibility.

Response: The agency agrees.

Comment: One individual commented, regarding autism eligibility, that the rule should clarify that the medical diagnosis of autism is different than the educational identification of autism and that the characteristics listed in the federal regulations of what often displays in individuals with autism should be clarified in the rule as not being a required list or an exhaustive list.

Response: The agency agrees that clarification may be beneficial to the rule. At adoption, subsection (c)(1) has been revised to state that a determination of whether a student meets the criteria for autism cannot require that a student meets the medical/psychological diagnosis of autism, nor can the absence of the characteristics listed in the federal regulations as often occurring in individuals with autism exclude a student from meeting eligibility for autism.

Comment: Two individuals and TxSER commented in support of adding communication and social interaction to the autism evaluation report.

Response: The agency agrees.

Comment: DRTx, TxSER, the Arc of Texas, Autism Speaks, and the Autism Society of Texas requested to add "positive" to behavioral interventions and supports regarding autism eligibility and the evaluation report, as well as considerations of the eleven elements of the state's autism supplement as appropriate.

Response: The agency agrees in part and disagrees in part. The agency agrees to add the word "positive" to behavioral interventions and strategies and has modified §89.1040(c)(1) accordingly at adoption. However, the agency disagrees with adding reference to all strategies in the autism supplement, as all of the strategies may not be relevant for an initial evaluation report.

Comment: A lead school psychologist requested clarification on whether the required written report of evaluation for autism applies to students who did not qualify.

Response: The comment is outside the scope of proposed rulemaking.

Comment: Autism Speaks requested to add a reference to the Autism Supplement by name.

Response: The agency disagrees with adding specific reference to the autism supplement, as the term of art is not as important as the required strategies being included in the IEP.

Comment: TxSER and Autism Speaks commented that expanded core curriculum should be added for deaf-blindness.

Response: The agency disagrees. Based on public comment, reference to the expanded core curriculum has been removed at adoption from subsection (c)(12)(A)(iv), relating to visual impairment, so it will not be added to deaf-blindness.

Comment: Thirty-two individuals commented in support of removing the requirement for an ontological examination for deaf and hard of hearing eligibility.

Response: The agency agrees.

Comment: Three individuals commented to protest removal of the requirement for an ontological examination for deaf and hard of hearing eligibility.

Response: The agency disagrees, as this should not be an absolute requirement for determining eligibility.

Comment: TxSER and Autism Speaks commented that language should be added regarding eligibility for deaf and hard of hearing to clarify that a documented hearing loss is not required if a student is unable to participate in formal audiological testing or the student has a suspected neurological or functional loss of hearing.

Response: The agency disagrees that this is necessary for the determination of eligibility for deaf and hard of hearing, but will consider it for future amendments.

Comment: One individual commented that the term "amplification" in subsection (c)(3) is confusing.

Response: The agency agrees that a different word may be more appropriate and has changed the term at adoption to "hearing assistive technology."

Comment: One individual suggested an alternative definition for deaf or hard of hearing and eligibility criteria.

Response: The agency disagrees. Other eligibility categories, such as other health impairment, may be considered if the deaf or hard of hearing eligibility criteria does not apply.

Comment: Five individuals, Texas Health and Human Services, TxSER, and Autism Speaks, commented asking for clarification on eligibility for an infant or toddler to meet eligibility as deaf or hard of hearing.

Response: The agency agrees that additional clarification is needed and has revised subsection (c)(3)(B) the eligibility at adoption to more closely mirror the federal regulations for an infant or toddler with a disability.

Comment: One individual commented in support of the communication assessment being required for deaf or hard of hearing eligibility.

Response: The agency agrees.

Comment: Approximately 70 individuals and Parent to Parent, TxSER, DRTx, and TCASE commented either in full support, or in support with additional recommendations, of the name change from emotional disturbance to emotional/behavioral disability. From those comments, at least 65 individuals and TCASE commented in support of the name change from emotional disturbance to emotional/behavioral disability, one commenter stated that there should not be punctuation between emotional and behavioral, one commenter requested that the term be changed to mental health disability, one commenter requested that the term be changed to emotional dysregulation disability/disorder, and other commenters recommended removing the term "behavioral" based on perceived stigma.

Response: The agency agrees that removal of the term "disturbance" is appropriate. At adoption, the agency has deleted "behavioral," so the term will be emotional disability. Changes have been made throughout the rule where this eligibility category is named.

Comment: DRTx, TxSER, and the Arc of Texas suggested that the evaluation report for emotional disability include recommendations for mental health supports and social interaction.

Response: The agency disagrees and provides the following clarification. Positive behavioral supports and interventions could include both of these types of recommendations.

Comment: Two individuals expressed interest in revising eligibility for intellectual disability.

Response: The comment is outside the scope of the proposed rulemaking.

Comment: Three individuals and Alliance of and for Visually Impaired Texans commented in support of the clarification that multiple disabilities does not include deaf-blindness.

Response: The agency agrees.

Comment: Twenty-nine individuals commented generally questioning the information that would be required by a qualified medical professional for the eligibility categories of orthopedic impairment, other health impairment, and traumatic brain injury. The commenters generally supported the idea that the medical professionals were not official members of the multi-disciplinary team but need to provide certain information.

Response: The agency agrees that further clarification is needed. At adoption, §89.1040(c)(7) has been modified to require a medical diagnosis for the eligibility of orthopedic impairment; subsection (c)(8) has been modified to require identification or confirmation of the student's health problem for the eligibility of other health impairment; and subsection (c)(11) has been modified to require a medical diagnosis for the eligibility category of traumatic brain injury.

Comment: DRTx commented that autism should be added to the list of impairments not considered a specific learning disability in subsection (c)(9)(A).

Response: The agency disagrees with adding autism to this list at this time, as the current list is taken from federal regulations.

Comment: Twenty-two individuals commented in support of specific learning disability (SLD) in subsection (c)(9) being amended to include identifications of dyslexia or dysgraphia.

Response: The agency agrees.

Comment: One individual requested that dyslexia and dysgraphia be listed individually under areas of SLD.

Response: The agency disagrees as dyslexia is an SLD in basic reading and/or fluency while dysgraphia is an SLD in written expression.

Comment: TCASE questioned whether dyscalculia should be added to the area of math calculation in subsection (c)(9).

Response: The comment is outside the scope of the proposed rulemaking.

Comment: Three individuals commented regarding subsection (c)(9)(C), stating that it was incorrect or unnecessary to specify that the presence of a significant variance among specific areas of cognitive function or between specific areas of cognitive function and academic achievement is not required for determining an SLD.

Response: The agency disagrees. In 2021, §89.1040 was revised to formally remove the pathway for SLD eligibility through a significant discrepancy method. However, since that time, this method is sometimes being substituted for the pattern of strengths and weaknesses model of determining eligibility. While a multi-disciplinary team can always make the decision to utilize formal assessments in an evaluation, the agency has determined it is important to highlight that requiring a significant variance to be present is not a requirement for an SLD determination.

Comment: An individual commented regarding classroom observations for purposes of SLD eligibility and questioned whether the agency intended to prohibit the general education classroom teacher from conducting the required observation.

Response: The agency disagrees and has determined no changes to the rule text are necessary, as the multi-disciplinary team would best determine who will conduct the required observation. The agency does note that it would be difficult for the child's general education classroom teacher to be the one conducting the observation, as that teacher would be responsible for observing and teaching all other students in the classroom.

Comment: An individual commented that in subsection (c)(9)(F), the agency did not make similar amendments to the text about "regular" teachers as it did in other portions of the rule.

Response: The agency agrees and has modified subsection (c)(9)(F) at adoption to use the term "general education" teacher.

Comment: DRTx commented that the term "remedial reading teacher" should be defined or updated.

Response: The agency disagrees with making a change at this time, as this may be a substantive change that would need to allow for additional public comment.

Comment: TCASE commented that subsection (c)(9)(G)(i) should be revised to remove the phrase "a suspected specific learning disability" as it is redundant.

Response: The agency agrees and has determined that rephrasing would be beneficial. At adoption, subsection (c)(9)(G)(i) has been revised to clarify that the process when the SLD of dyslexia is suspected.

Comment: TCASE commented that subsection (c)(9)(G)(iv) should be deleted because SLD is the qualifying eligibility category.

Response: The agency disagrees. While SLD will remain as the overall eligibility category, the identification and use of the terms dyslexia and/or dysgraphia are important to use in the evaluation report, if either or both of those disabilities are identified.

Comment: Eleven individuals and the Alliance of and for Visually Impaired Texans commented that the elements of the expanded core curriculum should not be included in an evaluation for eligibility as a student with a visual impairment, stating that this is part of considerations after eligibility is determined.

Response: While the agency disagrees with the premise that any area of the expanded core curriculum is not appropriate until after eligibility is determined, the agency agrees that without additional clarification and technical assistance, the addition of the text may be confusing to the field. Section 89.1040(c)(12)(A)(iv) has been modified at adoption to remove reference to the expanded core curriculum.

Comment: Twelve individuals, TxSER, and Autism Speaks, requested additional clarification regarding eligibility as a child under three years of age with a visual impairment.

Response: The agency agrees that clarification is necessary and has modified subsection (c)(12)(C) the definition at adoption to closely mirror the federal regulations regarding an infant or toddler with a disability.

Comment: DRTx, TCASE, and the Arc of Texas commented that the organizations agree with the transition to the developmental delay category. The Arc of Texas added that guidance will be crucial during the transition.

Response: The agency agrees.

Comment: Over 100 individuals, Frisco Independent School District (ISD), the Texas Association of School Psychologists, and TCASE commented the age range for developmental delay eligibility should change from ages 3-5 to ages 3-9 to be consistent with federal regulations.

Response: The agency agrees to align with the allowable age range in federal regulations and has updated in subsection (c)(13) the developmental delay eligibility to age 9 at adoption.

Comment: Two individuals commented in support of the eligibility category of developmental delay and requested to keep the ages 3-5.

Response: The agency disagrees. The agency originally proposed the age range of 3-5 to match the ages used in the noncategorical eligibility category. However, based on public comment, the agency has expanded the age range at adoption to allow developmental delay through 9 years of age to match the age range in federal regulations.

Comment: TxSER commented with concern about assigning what appears to be a high standard of deviation from the mean for eligibility for developmental delay, particularly for a child with a delay in only one or two areas. TxSER further suggested that subsection (c)(12)(C) supplant (c)(12)(A) and (B).

Response: The agency disagrees and clarifies that the eligibility provisions under any of the subsections would be allowable.

§89.1050, The Admission, Review, and Dismissal Committee

Comment: Fifty-seven individuals commented in full support of the proposed changes to §89.1050 in their entirety.

Response: The agency agrees.

Comment: TxSER, DRTx, and the Arc of Texas expressed support for the clarification of the term "parent" for consistent alignment.

Response: The agency agrees.

Comment: TxSER, DRTx, and the Arc of Texas recommended that §89.1050(c)(3) include the requirements for students with dyslexia in the ARD committee membership.

Response: The agency agrees. At adoption, subsection (c)(3)(D) has been added to mention the required ARD committee member when a student is suspected or identified with dyslexia and the ARD committee will be discussing initial or continued eligibility for special education services.

§89.1055, Content of the Individualized Education Program

Comment: Fifty-seven individuals commented in full support of the proposed changes to §89.1055 in their entirety.

Response: The agency agrees.

Comment: DRTx, the Arc of Texas, and TxSER commented in support of the proposed changes regarding measurable annual goals.

Response: The agency agrees.

Comment: One individual commented asking if every student's IEP would have to include the alternate assessment participation form, even if determined by the ARD committee as not eligible for that assessment.

Response: The agency agrees that there may have been confusion with the proposed amendment. Therefore, at adoption, subsections (c) and (d) have been reordered and reworded to clarify that the form is required only when the IEP needs to include the statement regarding the student not participating in the general assessment.

Comment: Autism Speaks commented that the terminology "autism supplement" should be used in subsection (g).

Response: The agency disagrees and has determined that naming the supplement in rule is unnecessary.

Comment: DRTx, the Arc of Texas, Autism Speaks, and TxSER commented that subsection (g)(4) should reflect alignment with the subsection about behavior intervention plans (BIPs).

Response: The agency agrees and has added in subsection (g)(4)(B) a reference to implementation and review of a BIP in accordance with subsection (j).

Comment: DRTx, the Arc of Texas, Autism Speaks, and TxSER commented that subsection (g)(5) should be modified to include more detail around future planning for students with autism, specifically to include "integrated learning and training" and "self-determination and self-advocacy skills."

Response: The agency agrees and has added text in subsection (g)(5) to refer to learning and training, as well as self-advocacy and self-determination skills.

Comment: The Texas Dyslexia Coalition commented that text should be added to reference the requirement to adhere to the State Board of Education rule in 19 TAC §74.28 and the *Dyslexia Handbook* when developing and implementing an IEP for a student who has been identified with dyslexia or a related disorder.

Response: The agency agrees and has added new subsection (i) at adoption.

Comment: DRTx, the Arc of Texas, and TxSER commented in support of aligning both federal and state transition requirements to age 14.

Response: The agency agrees.

Comment: DRTx, the Arc of Texas, Autism Speaks, and TxSER commented that futures planning for students with autism should be incorporated or mentioned in the transition subsections.

Response: The agency disagrees that this is necessary, as the futures planning subsection already cross references the transition subsections.

Comment: DRTx, the Arc of Texas, and TxSER commented that the autism supplement as well as all other supplements should be mentioned as having to be reviewed annually in proposed subsection (n). Autism Speaks had a similar comment but referenced the addition in subsection (g).

Response: The agency agrees in part and disagrees in part. The agency disagrees that adding reference to the autism supplement in proposed subsection (o), adopted as subsection (n), is appropriate, as that subsection specifically addresses the relevant transition subsections. However, based on another comment subsection (g) has been revised at adoption to refer to a review of the strategies at least annually.

Comment: DRTx, the Arc of Texas, Autism Speaks, and TxSER commented that a provision should be added reflecting that part of a parent's understanding of the meeting proceedings include an opportunity to review the required elements of the IEP in writing before signing.

Response: The agency disagrees that adding this requirement is necessary as part of the rule, as this practice would generally be considered as working in a collaborative manner as the rule already states. The agency will consider including in technical assistance a reminder to parents and districts of this opportunity.

Comment: Three individuals commented in support of the change to provisions addressing students who register during the summer months.

Response: The agency agrees.

Comment: Three individuals asked to clarify the process when a student transfers to a district with outdated evaluations or IEPs.

Response: The comment is outside the scope of proposed rulemaking. However, the agency will consider the question in technical assistance resources.

Comment: Frisco ISD asked for clarification on students who register in new districts during the school year prior to the year for which they are registering.

Response: The agency is unable to provide clarification as it is unclear what the district is asking.

Comment: The Texas Classroom Teachers Association commented that teachers need to be provided copies of students' IEPs prior to the first day of the school year and suggested that language be added to the subsection surrounding transfer students to provide relevant teachers with students' IEPs.

Response: The agency disagrees that additional text is necessary. The only reason IEPs would not be given to teachers prior to the first day of school in this situation is if the school is not yet in possession of the IEP or if the school is in the process of developing and adopting an IEP within the timelines. A critical part of implementing an IEP is providing IEP access to teachers.

§89.1131, Qualifications of Special Education, Related Service, and Paraprofessional Personnel

Comment: Fifty-seven individuals commented in full support of the proposed changes to §89.1131 in their entirety.

Response: The agency agrees.

Comment: One individual commented that proposed subsection (b) is unclear.

Response: The agency disagrees. This wording mirrors the statutory language in TEC, §29.0032.

Comment: One individual commented that providers of dyslexia instruction should be required to be special education certified.

Response: The agency disagrees, as statute does not require this unless the providers are employed in a special education position that requires such certification.

Comment: Two individuals questioned whether the terms paraprofessionals and educational aides, as used in subsection (d), were describing the same or different types of positions.

Response: The agency agrees that clarification would be helpful and, at adoption, has clarified in subsection (d) that paraprofessionals working as educational aides must be certified.

Comment: One advocate, TxSER, and Texas Parent 2 Parent, commented regarding the establishment of an educational representative for students with disabilities who have reached the age of 18 but who are not capable of making informed educational decisions.

Response: This comment is outside the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §28.025, which requires the State Board of Education (SBOE) to determine curriculum requirements for a high school diploma and certificate; TEC, §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.003, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for completing full individual and initial evaluations of a student for purposes of special education services; TEC, §29.005, which establishes criteria for developing a student's individualized education program prior to a student enrolling in a special education program; TEC, §29.010, which requires the agency to develop and implement a monitoring system for school district compliance with federal and state laws regarding special education; TEC, §29.011, which requires the commissioner to adopt procedures for compliance with federal requirements relating to transition services for students enrolled in special education programs; TEC, §29.0111, which appropriates state transition planning to begin for a student no later than the student turning 14 years of age; TEC, §29.012, which requires the commissioner to develop and implement procedures for compliance with federal requirements relating to transition services for students enrolled in a special education program; TEC, §29.017, which establishes criteria for the transfer of rights from a parent to a child with a disability who is 18 or older or whose disabilities have been removed under Texas Family Code, Chapter 31, to make educational decisions; TEC, §29.018, which requires the commissioner to make grants available to school districts to support covering the cost of education services for students with disabilities; TEC, §29.0031, as amended by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023, which establishes requirements of a district if it is suspected or has reason to suspect that a student may have dyslexia; TEC, §29.0032, as amended by HB 3928, 88th Texas Legislature, Regular Session, 2023, which establishes criteria for providers of dyslexia instruction; TEC, §30.001, which requires the commissioner, with approval by the SBOE, to establish a plan for the coordination of services to students with a disability; TEC, §30.002, which requires the agency to develop and administer a statewide plan for the education of children with visual impairments; TEC, §30.083, which requires the development of a statewide plan for educational services for students who are deaf or hard of hearing; TEC, §37.0021, which establishes the use of confinement, restraint, seclusion, and time-out for a student with a disability; TEC, §48.004, which requires the commissioner to adopt rules necessary for administering the Foundation School Program; TEC, §48.102, which establishes criteria for school districts to receive an annual allotment for students in a special education program; Texas Government Code, §392.002, which defines "authority" or "housing authority;" 34 Code of Federal Regulations (CFR), §300.8, which defines terms regarding a child with a disability; 34 CFR, §300.100, which establishes eligibility criteria for a state to receive assistance; 34 CFR, §300.101, which defines the requirement for all children residing in the state between the ages of 3-21 to have a free appropriate education available; 34 CFR, §300.111, which defines the requirement of the state to have policies and procedures in place regarding child find; 34 CFR, §300.114, which defines least restrictive environment requirements; 34 CFR, §300.121, which establishes the requirement for a state to have procedural safeguards; 34 CFR, §300.122, which establishes the requirement for evaluation of children with disabilities; 34 CFR, §300.124, which establishes the requirement of the state to have policies and procedures in place regarding the transfer of children from the Part C program to the preschool program; 34 CFR, §300.129, which establishes criteria for the

state responsibility regarding children in private schools; 34 CFR, §300.147, which establishes the criteria for the state education agency when implementing the responsibilities each must ensure for a child with a disability who is placed in or referred to a private school or facility by a public agency; 34 CFR, §300.149, which establishes the state education agency's responsibility for general supervision; 34 CFR, §300.151, which establishes the criteria for the adoption of state complaint procedures; 34 CFR, §300.152, which establishes the criteria for minimum state complaint procedures; 34 CFR, §300.153, which establishes the criteria for filing a complaint; 34 CFR, §300.156, which establishes the criteria for the state education agency to establish and maintain qualification procedures for personnel serving children with disabilities; 34 CFR, §300.320, which defines the requirements for an individualized education program (IEP); 34 CFR, §300.322, which establishes the requirement for a parent participation opportunity at each IEP team meeting; 34 CFR, §300.323, which establishes the timeframe for when IEPs must be in effect; 34 CFR, §300.301, which establishes the requirement for initial evaluations; 34 CFR, §300.302, which clarifies that screening for instructional purposes is not an evaluation; 34 CFR, §300.303, which establishes the criteria for reevaluations; 34 CFR, §300.304, which establishes the criteria for reevaluation procedures; 34 CFR, §300.305, which establishes the criteria for additional requirements for evaluations and reevaluations; 34 CFR, §300.306, which defines the determination of eligibility; 34 CFR, §300.307, which establishes the criteria for determining specific learning disabilities; 34 CFR, §300.308, which establishes criteria for additional group members in determining whether a child is suspected of having a specific learning disability as defined in 34 CFR, §300.8; 34 CFR, §300.309, which establishes criteria for determining the existence of a specific learning disability; 34 CFR, §300.310, which establishes criteria for observation to document the child's academic performance and behavior in the areas of difficulty; 34 CFR, §300.311, which establishes criteria for specific documentation for the eligibility determination; 34 CFR, §300.500, which establishes the responsibility of a state education agency and other public agencies to ensure the establishment, maintenance, and implementation of procedural safeguards; 34 CFR, §300.506, which establishes the requirement of each public agency to establish procedures to resolve disputes through a mediation process; 34 CFR, §300.507, which establishes criteria for filing a due process complaint; and 34 CFR, §300.600, which establishes requirements for state monitoring and enforcement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§28.025; 29.001; 29.003; 29.0031, as amended by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023; 29.0032, as amended by HB 3928, 88th Texas Legislature, Regular Session, 2023; 29.004; 29.005; 29.010; 29.011; 29.0111; 29.012; 29.017; 29.018; 30.001; 30.002; 30.083; 37.0021; 48.004; and 48.102; Texas Government Code, §392.002; and 34 Code of Federal Regulations, §§300.8, 300.100, 300.101, 300.111, 300.114, 300.121, 300.122, 300.124, 300.129, 300.147, 300.149, 300.151, 300.152, 300.153, 300.156, 300.320, 300.322, 300.323, 300.301, 300.302, 300.303, 300.304, 300.305, 300.306, 300.307, 300.308, 300.309, 300.310, 300.311, 300.500, 300.506, 300.507, and 300.600.

<rule>

§89.1011. Full Individual and Initial Evaluation.

- (a) Referral of students for a full individual and initial evaluation (FIIE) for possible special education and related services must be a part of the school district's multi-tiered system of academic and behavioral supports. Students not making progress in the general education classroom should be considered for all interventions and support services available to all students, such as tutorial; compensatory; response to evidence-based intervention; and other academic or behavior support services. The school district cannot require a student to ~~participate in~~ interventions and support services for any specific length of time prior to a referral being made or an FIIE being conducted. If the student continues to experience difficulty in the general education classroom with the provision of interventions and support services or at any time district personnel suspect a disability and a possible need for special education and related services, district personnel must refer the student for an FIIE. A referral or request for an FIIE may be initiated at any time by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student. While an FIIE is being conducted, a student must continue to receive any necessary interventions and support services to target their academic or behavioral needs.

- (b) If a parent submits a written request to a school district's director of special education services or to a district administrative employee, such as a campus principal, for an FIIE of a student, the school district must, not later than the 15th school day after the date the district receives the request:
- (1) provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; a copy of the Overview of Special Education for Parents form created by the Texas Education Agency (TEA); and an opportunity to give written consent for the evaluation; or
 - (2) provide the parent with prior written notice of its refusal to conduct an evaluation consistent with 34 CFR, §300.503; a copy of the Overview of Special Education for Parents form created by TEA; and a copy of the procedural safeguards notice required by 34 CFR, §300.504.
- (c) When a school district initiates the referral for an FIIE of a student, the district must provide the parent with the information and materials described in subsection (b)(1) of this section.
- (d) Except as otherwise provided in this section, a written report of an FIIE of a student must be completed as follows:
- (1) not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent, except that if a student has been absent from school during that period on three or more school days, that period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent; or
 - (2) for students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or home school setting, not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent.
- (e) Notwithstanding the timelines in subsections (d) and (g) of this section, if the school district received the written consent for the evaluation from the student's parent:
- (1) at least 35 but less than 45 school days before the last instructional day of the school year, the written report of an FIIE of a student must be provided to the student's parent not later than June 30 of that year;
 - (2) at least 35 but less than 45 school days before the last instructional day of the school year but the student was absent three or more school days between the time that the school district received written consent and the last instructional day of the school year, the timeline in subsection (d)(1) of this section applies to the date the written report of the FIIE must be completed; or
 - (3) less than 35 school days before the last day of the school year, the timeline in subsection (d)(1) of this section applies to the date the written report of the FIIE must be completed.
- (f) If a student was in the process of being evaluated for special education eligibility by a school district and enrolls in another school district before the previous school district completed the FIIE, the new school district must coordinate with the previous school district as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation in accordance with 34 CFR, §300.301(d)(2) and (e) and §300.304(c)(5). The timelines in subsections (d) and (g) of this section do not apply in such a situation if:
- (1) the new school district is making sufficient progress to ensure a prompt completion of the evaluation; and
 - (2) the parent and the new school district agree to a specific time when the evaluation will be completed.
- (g) The admission, review, and dismissal (ARD) committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, individualized education program (IEP) and placement within 30 calendar days from the date of the completion of the written FIIE report. If the 30th day falls during the summer and school is not in session, the ARD committee must meet not later than the 15th school day of the following school year to finalize decisions concerning the student's initial eligibility

determination, and, if appropriate, IEP and placement. If the 30th day falls during the summer and school is not in session but an FIIE report indicates that the student would need extended school year services during that summer, the ARD committee must meet as expeditiously as possible after completion of the report.

- (h) A copy of the written FIIE report must be provided to the parent as soon as possible after completion of the report but no later than five school days prior to the initial ARD committee meeting, which will determine a student's initial eligibility under subsection (g) of this section, or not later than June 30 if subsection (e)(1) of this section applies.
- (i) For purposes of subsections (b), (d), (e), and (g) of this section, school day does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term. In the case of a school that operates under a school year calendar without spring and fall terms, a school day does not include a day that falls after the last instructional day of one school year and before the first instructional day of the subsequent school year.
- (j) For purposes of subsections (d)(1) and (e) of this section, a student is considered absent for the school day if the student is not in attendance at the school's official attendance taking time or alternative attendance taking time as described in the *Student Attendance Accounting Handbook*, adopted by reference under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook)

§89.1040. Eligibility Criteria.

- (a) Special education and related services. To be eligible to receive special education and related services, a student must be a "child with a disability," as defined in 34 Code of Federal Regulations (CFR), §300.8(a), subject to the provisions of 34 CFR, §300.8(c), the Texas Education Code (TEC), Subchapter A, and this section. The provisions in this section specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law.
- (b) Eligibility determination. The determination of whether a student is eligible for special education and related services is made by the student's admission, review, and dismissal committee. Any evaluation or re-evaluation of a student must be conducted in accordance with 34 CFR, §§300.301-300.306 and 300.122. The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility must include, but is not limited to, the following:
 - (1) a licensed specialist in school psychology (LSSP)/school psychologist, an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability; or
 - (2) a licensed or certified professional for a specific eligibility category defined in subsection (c) of this section.
- (c) Eligibility definitions.
 - (1) Autism. A student with autism is one who has been determined to meet the criteria for autism as stated in 34 CFR, §300.8(c)(1). A determination of whether a student meets the criteria for autism as stated in 34 CFR, §300.8(c)(1), cannot require that the student meets the requirements for a medical/psychological diagnosis of autism. The absence of other characteristics often associated with autism listed in 34 CFR, 300.8(c)(1), does not exclude a student from meeting eligibility as a student with autism. The team's written report of evaluation must include specific recommendations for communication, social interaction, and positive behavioral interventions and strategies.
 - (2) Deaf-blindness. A student with deaf-blindness is one who has been determined to meet the criteria for deaf-blindness as stated in 34 CFR, §300.8(c)(2). In meeting the criteria stated in 34 CFR, §300.8(c)(2), a student with deaf-blindness is one who, based on the evaluations specified in subsection (c)(3) and (12) of this section:
 - (A) meets the eligibility criteria for a student who is deaf or hard of hearing specified in subsection (c)(3) of this section and visual impairment specified in subsection (c)(12) of this section;

- (B) meets the eligibility criteria for a student with a visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, but a speech/language therapist, a certified speech and language therapist, or a licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected;
 - (C) has documented hearing and visual losses that, if considered individually, may not meet the requirements for a student who is deaf or hard of hearing or for visual impairment, but the combination of such losses adversely affects the student's educational performance; or
 - (D) has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that, without the provision of special education services, will adversely affect the student's educational performance.
- (3) Deaf or hard of hearing.
- (A) A student who is deaf or hard of hearing is one who has been determined to meet the criteria for deafness as stated in 34 CFR, §300.8(c)(3), or for students who have a hearing impairment as stated in 34 CFR, §300.8(c)(5). The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility based on being deaf or hard of hearing must include an audiological evaluation performed by a licensed audiologist and a communication assessment completed by the multidisciplinary team. The evaluation data must include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended hearing assistive technology.
 - (B) A child under three years of age meets the criteria for deaf or hard of hearing if the student's record indicates that the child is experiencing a developmental delay because of hearing loss or impairment, or the child has a physical or mental condition that has a high probability of resulting in a developmental delay and a sensory impairment, in accordance with 34 CFR, §303.21.
- (4) Emotional disability. A student with an emotional disability is one who has been determined to meet the criteria for emotional disturbance as stated in 34 CFR, §300.8(c)(4). The written report of evaluation must include specific recommendations for positive behavioral supports and interventions. The term emotional disability is synonymous with the term emotional disturbance and serious emotional disturbance, as these terms are used in federal or state law pertaining to students eligible for special education and related services.
- (5) Intellectual disability. A student with an intellectual disability is one who has been determined to meet the criteria for an intellectual disability as stated in 34 CFR, §300.8(c)(6). In meeting the criteria stated in 34 CFR, §300.8(c)(6), a student with an intellectual disability is one who:
- (A) has been determined to have significantly sub-average intellectual functioning as measured by a standardized, individually administered test of cognitive ability in which the overall test score is at least two standard deviations below the mean, when taking into consideration the standard error of measurement of the test; and
 - (B) concurrently exhibits deficits in at least two of the following areas of adaptive behavior: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.
- (6) Multiple disabilities.
- (A) A student with multiple disabilities is one who has been determined to meet the criteria for multiple disabilities as stated in 34 CFR, §300.8(c)(7). In meeting the criteria stated in 34 CFR, §300.8(c)(7), that a combination of impairments causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments, a student with multiple disabilities is one who has a combination of disabilities defined in this section and who meets all of the following conditions:
 - (i) the student's disabilities are expected to continue indefinitely; and

- (ii) the disabilities severely impair performance in two or more of the following areas:
 - (I) psychomotor skills;
 - (II) self-care skills;
 - (III) communication;
 - (IV) social and emotional development; or
 - (V) cognition.
- (B) Students who have more than one of the disabilities defined in this section but who do not meet the criteria in subparagraph (A) of this paragraph must not be classified or reported as having multiple disabilities.
- (C) Multiple disabilities does not include deaf-blindness.
- (7) Orthopedic impairment. A student with an orthopedic impairment is one who has been determined to meet the criteria for orthopedic impairment as stated in 34 CFR, §300.8(c)(8). A student's eligibility based on an orthopedic impairment must include a medical diagnosis provided by a licensed physician.
- (8) Other health impairment. A student with other health impairment is one who has been determined to meet the criteria for other health impairment due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Disorder as stated in 34 CFR, §300.8(c)(9). A student's eligibility based on other health impairment must include identification or confirmation of the student's chronic or acute health problem provided by a licensed physician, a physician assistant, or an advanced practice registered nurse with authority delegated under Texas Occupations Code, Chapter 157.
- (9) Specific learning disability.
 - (A) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; intellectual disability; emotional disability; or environmental, cultural, or economic disadvantage.
 - (B) A student with a specific learning disability is one who:
 - (i) has been determined through a variety of assessment tools and strategies to meet the criteria for a specific learning disability as stated in 34 CFR, §300.8(c)(10), in accordance with the provisions in 34 CFR, §§300.307-300.311;
 - (ii) when provided with learning experiences and instruction appropriate for the student's age or state-approved grade-level standards as indicated by performance on multiple measures such as in-class tests, grade average over time (e.g. six weeks or semester), repeated performance on progress monitoring measures, norm- or criterion-referenced tests, and statewide assessments, does not achieve adequately for the student's age or to meet state-approved grade-level standards in one or more of the following areas:
 - (I) oral expression;
 - (II) listening comprehension;
 - (III) written expression, which may include dysgraphia;

- (IV) basic reading skill, which may include dyslexia;
 - (V) reading fluency skills, which may include dyslexia;
 - (VI) reading comprehension;
 - (VII) mathematics calculation; or
 - (VIII) mathematics problem solving;
- (iii) meets one of the following criteria:
- (I) does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in clause (ii)(I)-(VIII) of this subparagraph when using a process based on the student's response to scientific, research-based intervention; or
 - (II) exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, state-approved grade-level standards, or intellectual development that is determined to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 CFR, §300.304 and §300.305; and
- (iv) does not meet the findings under clauses (ii) and (iii) of this subparagraph primarily as the result of:
- (I) a visual, hearing, or motor disability;
 - (II) an intellectual disability;
 - (III) emotional disability;
 - (IV) cultural factors;
 - (V) environmental or economic disadvantage; or
 - (VI) being emergent bilingual.
- (C) As part of the evaluation described in subparagraph (B) of this paragraph and 34 CFR, §§300.304-300.311, the presence of a significant variance among specific areas of cognitive function or between specific areas of cognitive function and academic achievement is not required when determining whether a student has a significant learning disability.
- (D) In order to ensure that underachievement by a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics, the following must be considered:
- (i) data that demonstrates the student was provided appropriate instruction in reading (as described in 20 United States Code (USC), §6368(3)), and/or mathematics within general education settings delivered by qualified personnel; and
 - (ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction, which must be provided to the student's parents. Data-based documentation of repeated assessments may include, but is not limited to, intervention progress monitoring results and reports, in-class tests on grade-level curriculum, or other regularly administered assessments. Intervals are considered reasonable if consistent with the assessment requirements of a student's specific instructional program.
- (E) The school district must ensure that the student is observed in the student's learning environment, including the general education classroom setting, to document the student's academic performance and behavior in the areas of difficulty. In determining

whether a student has a specific learning disability, the multidisciplinary team must decide to either use information from an observation in routine classroom instruction and monitoring of the student's performance that was conducted before the student was referred for an evaluation or have at least one of the members described in subsection (b) or (c)(9)(F) of this section conduct an observation of the student's academic performance in the general education classroom after the student has been referred for an evaluation and the school district has obtained parental consent consistent with 34 CFR, §300.300(a). In the case of a student of less than school age or out of school, a member described in subsection (b) or (c)(9)(F) of this section must observe the student in an environment appropriate for a student of that age.

- (F) The determination of whether a student suspected of having a specific learning disability is a child with a disability as defined in 34 CFR, §300.8, must be made by the student's parents and a team of qualified professionals, which must include at least one person qualified to conduct individual diagnostic examinations of children such as a licensed specialist in school psychology/school psychologist, an educational diagnostician, a speech-language pathologist, or a remedial reading teacher and one of the following:
 - (i) the student's general education teacher;
 - (ii) if the student does not have a general education teacher, a general education classroom teacher qualified to teach a student of his or her age; or
 - (iii) for a student of less than school age, an individual qualified by the Texas Education Agency to teach a student of his or her age.
- (G) Suspicion, and the identification, of dyslexia or dysgraphia, in addition to the requirements of subparagraphs (A)-(F) of this paragraph, must include consideration of the following:
 - (i) when the specific learning disability of dyslexia is suspected or characteristics of dyslexia have been observed from a reading instrument administered under TEC, §28.006, or a dyslexia screener under TEC, §38.003, the team established under subsections (b) and (c)(9)(F) of this section must include a professional who meets the requirements under TEC, §29.0031(b), and §74.28 of this title (relating to Students with Dyslexia and Related Disorders), including any handbook adopted in the rule;
 - (ii) an evaluation for dyslexia or dysgraphia must include all of the domains or other requirements listed in TEC, §38.003, and §74.28 of this title, including any handbook adopted in the rule;
 - (iii) when identifying dyslexia and determining eligibility or continued eligibility for special education and related services, the admission, review, and dismissal (ARD) committee must include a professional who meets the requirements of TEC, §29.0031(b), and §74.28 of this title, including any handbook adopted in the rule; and
 - (iv) when a student is identified with dyslexia and/or dysgraphia, the terms dyslexia and/or dysgraphia, as appropriate, must be used in a student's evaluation report. For formal eligibility purposes under special education, the category of specific learning disability will be reported by a school district.
- (10) Speech impairment. A student with a speech impairment is one who has been determined to meet the criteria for speech or language impairment as stated in 34 CFR, §300.8(c)(11). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a speech impairment must include a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech/language pathologist.

- (11) Traumatic brain injury. A student with a traumatic brain injury is one who has been determined to meet the criteria for traumatic brain injury as stated in 34 CFR, §300.8(c)(12). A student's eligibility based on a traumatic brain injury must include a medical diagnosis provided by a licensed physician.
- (12) Visual impairment.
- (A) A student with a visual impairment is one who has been determined to meet the criteria for visual impairment as stated in 34 CFR, §300.8(c)(13). Information from a variety of sources must be considered by the multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on visual impairment in order to determine the need for specially designed instruction as stated in 34 CFR, §300.39(b)(3), and must include:
- (i) a medical report by a licensed ophthalmologist or optometrist that indicates the visual loss stated in exact measures of visual field and corrected visual acuity, at a distance and at near range, in each eye. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. The report should also include a diagnosis and prognosis whenever possible and whether the student has:
 - (I) no vision or visual loss after correction; or
 - (II) a progressive medical condition that will result in no vision or a visual loss after correction;
 - (ii) a functional vision evaluation by a certified teacher of students with visual impairments or a certified orientation and mobility specialist. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision and recommendations concerning the need for a clinical low vision evaluation;
 - (iii) a learning media assessment by a certified teacher of students with visual impairments. The learning media assessment must include recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the student and whether or not there is a need for ongoing evaluation in this area; and
 - (iv) as part of the full individual and initial evaluation, an orientation and mobility evaluation conducted by a person who is appropriately certified as an orientation and mobility specialist. The orientation and mobility evaluation must be conducted in a variety of lighting conditions and in a variety of settings, including in the student's home, school, and community, and in settings unfamiliar to the student.
- (B) A person who is appropriately certified as an orientation and mobility specialist must participate in an initial eligibility determination and any reevaluation as part of the multidisciplinary team, in accordance with 34 CFR, §§300.122 and 300.303-300.311, in evaluating data used to make the determination of the student's need for specially designed instruction.
- (C) A child under three years of age meets the criteria for visual impairment if the child's record indicates that the child is experiencing a developmental delay because of vision loss or impairment, or the child has a physical or mental condition that has a high probability of resulting in a developmental delay and a sensory impairment, in accordance with 34 CFR, §303.21.
- (13) Developmental delay. A student with developmental delay is one who is between the ages of 3-9 who is evaluated by a multidisciplinary team for at least one disability category listed in paragraphs (1)-(12) of this subsection and whose evaluation data indicates a need for special education and related services and shows evidence of, but does not clearly confirm, the presence

of the suspected disability or disabilities due to the child's young age. In these cases, an ARD committee may determine that data supports identification of developmental delay in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development. To use this eligibility category, multiple sources of data must converge to indicate the student has a developmental delay as described by one of the following:

- (A) performance on appropriate norm-referenced measures, including developmental measures, indicate that the student is at least 2 standard deviations below the mean or at the 2nd percentile of performance, when taking into account the standard error of measurement (SEM), in one area of development as listed in this paragraph, along with additional convergent evidence such as interviews and observation data that supports the delay in that area;
 - (B) performance on appropriate norm-referenced measures, including developmental measures, indicate that the student is at least 1.5 standard deviations below the mean or at the 7th percentile of performance, when taking into account the SEM, in at least two areas of development as listed in this paragraph, along with additional convergent evidence such as interviews and observation data that supports the delays in those areas; or
 - (C) a body of evidence from multiple direct and indirect sources, such as play-based assessments, information from the student's parent, interviews, observations, work samples, checklists, and other informal and formal measures of development, that clearly document a history and pattern of atypical development that is significantly impeding the student's performance and progress across settings when compared to age-appropriate expectations and developmental milestones in one or more areas of development as listed in this paragraph.
- (14) Noncategorical. A student between the ages of 3-5 who is evaluated as having an intellectual disability, an emotional disability, a specific learning disability, or autism may be described as noncategorical early childhood.
- (d) Developmental delay eligibility guidelines. Developmental delay, as described in subsection (c)(13) of this section, and noncategorical, as described in subsection (c)(14) of this section, may be used within the following guidelines.
- (1) No school district will be required to use the eligibility category of developmental delay; however, if a district chooses to use this eligibility category, it must use the definition and criteria described in subsection (c)(13) of this section.
 - (2) If a school district chooses to use the eligibility category described in subsection (c)(13) of this section, it may do so beginning with the 2024-2025 school year.
 - (3) The eligibility category of noncategorical, as described in subsection (c)(14) of this section, must no longer be used by any school district beginning with the 2025-2026 school year. Any eligible student who begins the 2025-2026 school year already identified under subsection (c)(14) of this section may maintain this eligibility category, if determined appropriate by the student's ARD committee, until the required re-evaluation before the age of six.

§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, §37.004 (Placement of Students with Disabilities);
 - (16) TEC, §37.307 (Placement and Review of Student with Disability);
 - (17) TEC, Chapter 39, Subchapter B (Assessment of Academic Skills); and
 - (18) 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 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, as defined by 34 CFR, §300.30, of the student;
 - (B) not less than one general education teacher of the student (if the student is, or may be, participating in the general 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 emergent bilingual.
- (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;
 - (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; or
 - (D) a student who is suspected or identified with dyslexia, when determining initial or continued eligibility, the ARD committee must include a professional who meets the requirements of TEC, §29.0031(b), and §74.28 of this title (relating to Students with Dyslexia and Related Disorders), including any handbook adopted in the rule.
- (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) 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.

§89.1055. Individualized Education Program.

- (a) The individualized education program (IEP) developed by the admission, review, and dismissal (ARD) committee for each student with a disability must comply with the requirements of 34 Code of Federal Regulations (CFR), §300.320 and §300.324, and include all applicable information under Texas Education Code (TEC), §29.0051.
- (b) To be considered a measurable annual goal under 34 CFR, §300.320(a)(2), a goal must include the components of a timeframe, condition, behavior, and criterion. While at least one measurable annual goal is required, the number of annual goals will be determined by the ARD committee after examination of the student's present levels of academic achievement and functional performance and areas of need.
 - (1) Annual goals are also required in the following circumstances:
 - (i) when the content of a subject/course is modified, whether the content is taught in a general or special education setting, in order to address how the content is modified; and
 - (ii) when a student is removed from the general education setting for a scheduled period of time but the content of the subject/course is not modified (e.g., a student who is progressing on enrolled grade level curriculum but requires a more restrictive environment for a period of time due to behavioral concerns).
 - (2) Short-term objectives/benchmarks, used as intermediary steps or milestones toward accomplishing an annual goal, may be included in a measurable annual goal. Short-term objectives/benchmarks:
 - (i) must be included in an annual goal if the ARD committee has determined that a student will not participate in the general state assessment; and
 - (ii) regardless of whether the objectives/benchmarks are related to a student not participating the general state assessment, cannot be used as the criterion to indicate mastery of the annual goal.
- (c) The IEP must include a statement of any individual appropriate and allowable accommodations in the administration of assessment instruments developed in accordance with TEC, §39.023(a)-(c), or districtwide assessments of student achievement (if the district administers such optional assessments) that are necessary to measure the academic achievement and functional performance of the student on the assessments.
- (d) If the ARD committee determines that the student will not participate in a general statewide or districtwide assessment of student achievement (or part of an assessment), the following requirements must be met.
 - (1) The IEP must include a statement explaining:
 - (A) why the student cannot participate in the general assessment; and

- (B) why the particular alternate assessment selected is appropriate for the student, and
- (2) The Texas Education Agency's alternate assessment participation requirements form, if one is made available to school districts, must be included in the student's IEP to document the statement required under this subsection.
- (e) If the ARD committee determines that the student is in need of extended school year (ESY) services, as described in §89.1065 of this title (relating to Extended School Year Services), then the IEP must identify which of the goals and objectives in the IEP will be addressed during ESY services.
- (f) For students with visual impairments, from birth through 21 years of age, the IEP or individualized family services plan must also meet the requirements of TEC, §30.002(e).
- (g) For students with autism eligible under §89.1040(c)(1) of this title (relating to Eligibility Criteria), the strategies described in this subsection must be considered, at least annually based on peer-reviewed, research-based educational programming practices to the extent practicable, and, when needed, addressed in the IEP:
 - (1) extended educational programming (for example: extended day and/or extended school year services that consider the duration of programs/settings based on data collected related to behavior, social skills, communication, academics, and self-help skills);
 - (2) daily schedules reflecting minimal unstructured time and active engagement in learning activities (for example: lunch, snack, and recess periods that provide flexibility within routines; adapt to individual skill levels; and assist with schedule changes, such as changes involving substitute teachers and pep rallies);
 - (3) in-home and community-based training or viable alternatives that assist the student with acquisition of social, behavioral, communication, and self-help skills (for example: strategies that facilitate maintenance and generalization of such skills from home to school, school to home, home to community, and school to community);
 - (4) positive behavior support strategies based on relevant information, for example:
 - (A) antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions; and
 - (B) a behavioral intervention plan developed from a functional behavioral assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings and is implemented and reviewed in accordance with subsection (j) of this section;
 - (5) beginning at any age, consistent with subsection (l) of this section, futures planning for integrated learning and training, living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments, including self-determination and self-advocacy skills;
 - (6) parent/family training and support, provided by qualified personnel with experience in autism, that, for example:
 - (A) provides a family with skills necessary for a student to succeed in the home/community setting;
 - (B) includes information regarding resources (for example: parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching/management techniques related to the student's curriculum); and
 - (C) facilitates parental carryover of in-home training (for example: strategies for behavior management and developing structured home environments and/or communication training so that parents are active participants in promoting the continuity of interventions across all settings);
 - (7) suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social/behavioral progress based on the student's developmental and learning level (acquisition,

fluency, maintenance, generalization) that encourages work towards individual independence as determined by, for example:

- (A) adaptive behavior evaluation results;
 - (B) behavioral accommodation needs across settings; and
 - (C) transitions within the school day;
- (8) communication interventions, including language forms and functions that enhance effective communication across settings (for example: augmentative, incidental, and naturalistic teaching);
 - (9) social skills supports and strategies based on social skills assessment/curriculum and provided across settings (e.g., peer-based instruction and intervention, video modeling, social narratives, and role playing);
 - (10) professional educator/staff support (for example: training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP); and
 - (11) teaching strategies based on peer reviewed, research-based practices for students with autism (for example: those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, or social skills training).
- (h) If the ARD committee determines that services are not needed in one or more of the areas specified in subsection (g) of this section, the IEP must include a statement to that effect and the basis upon which the determination was made.
 - (i) For students identified with the specific learning disability of dyslexia or a related disorder eligible under §89.1040(c)(9) of this title, the IEP must also be developed and implemented in accordance with the requirements under §74.28 of this title (relating to Students with Dyslexia and Related Disorders), including any handbook adopted in the rule.
 - (j) If the ARD committee determines that a behavior improvement plan or a behavioral intervention plan is appropriate for a student, that plan must be included as part of the student's IEP and provided to each teacher with responsibility for educating the student. If a behavior improvement plan or a behavioral intervention plan is included as part of a student's IEP, the ARD committee shall review the plan at least annually, and more frequently if appropriate, to address:
 - (1) changes in a student's circumstances that may impact the student's behavior, such as:
 - (A) the placement of the student in a different educational setting;
 - (B) an increase or persistence in disciplinary actions taken regarding the student for similar types of behavioral incidents;
 - (C) a pattern of unexcused absences; or
 - (D) an unauthorized, unsupervised departure from an educational setting; or
 - (2) the safety of the student or others.
 - (k) Not later than the first IEP to be in effect when the student turns 14 years of age, the ARD committee must consider and, if appropriate, address the following issues in the IEP:
 - (1) appropriate student involvement in the student's transition to life outside the public school system;
 - (2) appropriate involvement in the student's transition by the student's parents and other persons invited to participate by:
 - (A) the student's parents; or
 - (B) the school district in which the student is enrolled;
 - (3) appropriate postsecondary education options, including preparation for postsecondary-level coursework;

- (4) an appropriate functional vocational evaluation;
 - (5) appropriate circumstances for facilitating a referral of a student or the student's parents to a governmental agency for services or public benefits, including a referral to a governmental agency to place the student on a waiting list for public benefits available to the student such as a waiver program established under the Social Security Act (42 U.S.C. Section 1396n(c)), §1915(c); and
 - (6) the use and availability of appropriate:
 - (A) supplementary aids, services, curricula, and other opportunities to assist the student in developing decision-making skills; and
 - (B) supports and services to foster the student's independence and self-determination, including a supported decision-making agreement under Texas Estates Code, Chapter 1357.
- (l) Beginning not later than the first IEP to be in effect when the student turns 14 years of age, or younger if determined appropriate by the ARD committee, the IEP must include:
- (1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
 - (2) the transition services, including courses of study, needed to assist the student in reaching the postsecondary goals.
- (m) The goals included in a student's IEP to comply with subsection (l) of this section are intended to comply with the requirements in TEC, §29.011(a)(6) and (8).
- (n) Beginning not later than the first IEP to be in effect when the student turns 18 years of age (see §89.1049 of this title (relating to Parental Rights Regarding Adult Students) for notice requirement of transfer of rights), the ARD committee must consider and, if appropriate, address the following issues in the student's IEP:
- (1) involvement in the student's transition and future by the student's parents and other persons, if the parent or other person:
 - (A) is invited to participate by the student or the school district in which the student is enrolled; or
 - (B) has the student's consent to participate pursuant to a supported decision-making agreement under Texas Estates Code, Chapter 1357; and
 - (2) the availability of age-appropriate instructional environments, including community settings or environments that prepare the student for postsecondary education or training, competitive integrated employment, or independent living, in coordination with the student's transition goals and objectives.
- (o) A student's ARD committee shall review at least annually the issues described in subsections (k), (l), and (n) of this section and, if necessary, update the portions of the student's IEP that address those issues.
- (p) 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.
- (q) The written statement of the IEP must document the decisions of the ARD committee with respect to issues discussed at each ARD committee meeting. The written statement must also include:
- (1) the date of the meeting;
 - (2) the name, position, and signature of each member participating in the meeting; and
 - (3) an indication of whether the child's parents, the adult student, if applicable, and the administrator agreed or disagreed with the decisions of the ARD committee.
- (r) 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.
- (s) 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), by either adopting the student's IEP from the previous school district or developing, adopting, and implementing a new IEP. The timeline for adopting the previous IEP or developing, adopting, and

implementing a new IEP 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, if determined necessary, conduct a full individual and initial evaluation and make an eligibility determination and, if appropriate, develop, adopt, and implement a new IEP, within the timelines established in §89.1011 of this title (relating to Full and Individual Initial Evaluation). If the school district determines that an evaluation is not necessary, the timeline for the new district to develop, adopt, and implement a new IEP is 20 school days from the date the student is verified as being a student eligible for special education services.
- (3) Students who register in a new school district in the state during the summer when students are not in attendance for instructional purposes, the provisions of paragraphs (1) and (2) of this subsection apply based on whether the students are coming from an in-state or out-of-state school district. All other provisions in this subsection apply to these students.
- (4) 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.
- (5) If a parent hasn't already provided verification of eligibility and the new school district has been unable to obtain the necessary verification records from the previous district by the 15th working day after the date a request for the records was submitted by the new district to the previous district, the new school district must seek verification from the student's parent. If the parent provides verification, the new school district must comply with all paragraphs of this subsection. The new school district is encouraged to ask the parent to provide verification of eligibility before the 15th working day after the date a request for the records was submitted by the new district to the previous district. If the parent is unwilling or unable to provide such verification, the new district must continue to take reasonable steps to obtain the student's records from the previous district and provide any services comparable to what the student received at the previous district if they communicate those to the new district.
- (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. The first school day after the new district receives a copy of the student's IEP that was in effect in the previous district begins the timelines associated with paragraphs (1) and (2) of this subsection.
- (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.
- (8) Once the new school district receives verification that the student had an IEP in effect at the previous district, comparable services must be provided to a student during the timelines established under paragraphs (1) and (2) of this subsection. Comparable services include provision of ESY services if those services are identified in the previous IEP or if the new district has reason to believe that the student would be eligible for ESY services.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §28.025, which requires the State Board of Education (SBOE) to determine curriculum requirements for a high school diploma and certificate; TEC, §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.003, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for completing full individual and initial evaluations of a student for purposes of special education services; TEC, §29.005, which establishes criteria for developing a student's individualized education program prior to a student enrolling in a special education program; TEC, §29.010, which requires the agency to develop and implement a monitoring system for school district compliance with federal and state laws regarding special education; TEC, §29.011, which requires the commissioner to adopt procedures for compliance with federal requirements relating to transition services for students enrolled in special education programs; TEC, §29.0111, which appropriates state transition planning to begin for a student no later than the student turning 14 years of age; TEC, §29.012, which requires the commissioner to develop and implement procedures for compliance with federal requirements relating to transition services for students enrolled in a special education program; TEC, §29.017, which establishes criteria for the transfer of rights from a parent to a child with a disability who is 18 or older or whose disabilities have been removed under Texas Family Code, Chapter 31, to make educational decisions; TEC, §29.018, which requires the commissioner to make grants available to school districts to support covering the cost of education services for students with disabilities; TEC, §29.0031, as amended by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023, which establishes requirements of a district if it is suspected or has reason to suspect that a student may have dyslexia; TEC, §29.0032, as amended by HB 3928, 88th Texas Legislature, Regular Session, 2023, which establishes criteria for providers of dyslexia instruction; TEC, §30.001, which requires the commissioner, with approval by the SBOE, to establish a plan for the coordination of services to students with a disability; TEC, §30.002, which requires the agency to develop and administer a statewide plan for the education of children with visual impairments; TEC, §30.083, which requires the development of a statewide plan for educational services for students who are deaf or hard of hearing; TEC, §37.0021, which establishes the use of confinement, restraint, seclusion, and time-out for a student with a disability; TEC, §48.004, which requires the commissioner to adopt rules necessary for administering the Foundation School Program; TEC, §48.102, which establishes criteria for school districts to receive an annual allotment for students in a special education program; Texas Government Code, §392.002, which defines "authority" or "housing authority;" 34 CFR, §300.8, which defines terms regarding a child with a disability; 34 CFR, §300.100, which establishes eligibility criteria for a state to receive assistance; 34 CFR, §300.101, which defines the requirement for all children residing in the state between the ages of 3-21 to have a free appropriate education available; 34 CFR, §300.111, which defines the requirement of the state to have policies and procedures in place regarding child find; 34 CFR, §300.114, which defines least restrictive environment requirements; 34 CFR, §300.121, which establishes the requirement for a state to have procedural safeguards; 34 CFR, §300.122, which establishes the requirement for evaluation of children with disabilities; 34 CFR, §300.124, which establishes the requirement of the state to have policies and procedures in place regarding the transfer of children from the Part C program to the preschool program; 34 CFR, §300.129, which establishes criteria for the state responsibility regarding children in private schools; 34 CFR, §300.147, which establishes the criteria for the state education agency when implementing the responsibilities each must ensure for a child with a disability who is placed in or referred to a private school or facility by a public agency; 34 CFR, §300.149, which establishes the state education agency's responsibility for general supervision; 34 CFR, §300.151, which establishes the criteria for the adoption of state complaint procedures; 34 CFR, §300.152, which establishes the criteria for minimum state complaint procedures; 34 CFR, §300.153, which establishes the criteria for filing a complaint; 34 CFR, §300.156, which establishes the criteria for the state education agency to establish and maintain qualification procedures for personnel serving children with disabilities; 34 CFR, §300.320, which defines the requirements for an individualized education program (IEP); 34 CFR, §300.322, which establishes the requirement for a parent participation opportunity at each IEP team meeting; 34 CFR, §300.323, which establishes the timeframe for when IEPs must be in effect; 34 CFR, §300.301, which establishes the requirement for initial evaluations; 34 CFR, §300.302, which clarifies that screening for instructional purposes is not an evaluation; 34 CFR, §300.303, which establishes the criteria for reevaluations; 34 CFR, §300.304, which establishes the criteria for reevaluation procedures; 34 CFR, §300.305, which establishes the criteria for additional requirements for evaluations and reevaluations; 34 CFR, §300.306, which defines the determination of eligibility; 34 CFR, §300.307, which establishes the criteria for determining specific learning disabilities; 34 CFR, §300.308, which establishes criteria for additional group members in determining whether a child is suspected of having a specific learning disability as defined in 34 CFR, §300.8; 34 CFR, §300.309, which

establishes criteria for determining the existence of a specific learning disability; 34 CFR, §300.310, which establishes criteria for observation to document the child's academic performance and behavior in the areas of difficulty; 34 CFR, §300.311, which establishes criteria for specific documentation for the eligibility determination; 34 CFR, §300.500, which establishes the responsibility of a state education agency and other public agencies to ensure the establishment, maintenance, and implementation of procedural safeguards; 34 CFR, §300.506, which establishes the requirement of each public agency to establish procedures to resolve disputes through a mediation process; 34 CFR, §300.507, which establishes criteria for filing a due process complaint; and 34 CFR, §300.600, which establishes requirements for state monitoring and enforcement.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§28.025; 29.001; 29.003; 29.0031, as amended by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023; 29.0032, as amended by HB 3928, 88th Texas Legislature, Regular Session, 2023; 29.004; 29.005; 29.010; 29.011; 29.0111; 29.012; 29.017; 29.018; 30.001; 30.002; 30.083; 37.0021; 48.004; and 48.102; Texas Government Code, §392.002; and 34 Code of Federal Regulations (CFR), §§300.8, 300.100, 300.101, 300.111, 300.114, 300.121, 300.122, 300.124, 300.129, 300.147, 300.149, 300.151, 300.152, 300.153, 300.156, 300.320, 300.322, 300.323, 300.301, 300.302, 300.303, 300.304, 300.305, 300.306, 300.307, 300.308, 300.309, 300.310, 300.311, 300.500, 300.506, 300.507, and 300.600.

<rule>

§89.1131. Qualifications of Special Education, Related Service, and Paraprofessional Personnel.

- (a) All special education and related service personnel must be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 Code of Federal Regulations, §300.156; the Texas Education Code (TEC), §§21.002, 21.003, and 29.304; or appropriate state agency credentials.
- (b) In accordance with TEC, §29.0032, a provider of dyslexia instruction is not required to be certified in special education unless the provider is employed in a special education position that requires the certification.
- (c) A teacher who holds a special education certificate or an endorsement may be assigned to any level of a basic special education instructional program serving eligible students 3-21 years of age, as defined in §89.1035(a) of this title (relating to Age Ranges for Student Eligibility), in accordance with the limitation of their certification, except for the following.
 - (1) Persons assigned to provide speech therapy instructional services must hold a valid Texas Education Agency certificate in speech and hearing therapy or speech and language therapy, or a valid state license as a speech/language pathologist.
 - (2) Teachers certified in the education of students with visual impairments must be available to students with visual impairments, including deaf-blindness, through one of the school district's instructional options, a shared services arrangement with other school districts, or an education service center.
 - (3) Teachers certified in the education of students who are deaf or hard of hearing must be available to students who are deaf or hard of hearing, including deaf-blindness, through one of the school district's instructional options, a regional day school program for the deaf, or a shared services arrangement with other school districts.
 - (4) The following provisions apply to physical education when an admission, review, and dismissal (ARD) committee has determined that a student requires specially designed instruction in physical education.
 - (A) When the ARD committee has made the determination and the arrangements are specified in the student's individualized education program, physical education may be provided by those authorized under §231.703 of this title (relating to Teacher of Adaptive Physical Education) and the following personnel:
 - (i) special education instructional or related service personnel who have the necessary skills and knowledge;

- (ii) physical education teachers;
 - (iii) occupational therapists;
 - (iv) physical therapists; or
 - (v) occupational therapist assistants or physical therapy assistants working under supervision in accordance with the standards of their profession.
- (B) When these services are provided by special education personnel, the district must document that they have the necessary skills and knowledge. Documentation may include, but need not be limited to, inservice records, evidence of attendance at seminars or workshops, or transcripts of college courses.
- (5) Teachers assigned full-time or part-time to instruction of students from birth through age two with visual impairments, including deaf-blindness, must be certified in the education of students with visual impairments. Teachers assigned full-time or part-time to instruction of students from birth through age two who are deaf or hard of hearing, including deaf-blindness, must be certified in education for students who are deaf and hard of hearing.
- (d) Paraprofessional personnel working as educational aides must be certified and may be assigned to work with eligible students, general and special education teachers, and related service personnel. Educational aides may also be assigned to assist students with special education transportation, serve as a job coach, or serve in support of community-based instruction. Educational aides paid from state administrative funds may be assigned to special education clerical or administrative duties.
- (e) Interpreting services for students who are deaf must be provided by an interpreter who is certified in the appropriate language mode(s), if certification in such mode(s) is available. If certification is available, the interpreter must be a certified member of or certified by the Registry of Interpreters for the Deaf or the Texas Board for Evaluation of Interpreters.
- (f) Orientation and mobility instruction must be provided by a certified orientation and mobility specialist who is certified by the Academy for Certification of Vision Rehabilitation and Education Professionals.