

The Texas Education Agency (TEA) adopts amendments to §§89.1035, 89.1053, and 89.1070, concerning clarification of provisions in federal regulations and state law. Section 89.1035 is adopted without changes to the proposed text as published in the July 19, 2024 issue of the *Texas Register* (49 TexReg 5242) and will not be republished. Sections 89.1053 and 89.1070 are adopted with changes to the proposed text as published in the July 19, 2024 issue of the *Texas Register* (49 TexReg 5242) and will be republished. The adopted amendment to §89.1053 implement Senate Bill (SB) 133, 88th Texas Legislature, Regular Session, 2023. The adopted amendments to §89.1035 and §89.1070 clarify graduation requirements for students receiving special education and related services as well as remove outdated language.

**REASONED JUSTIFICATION:** Section 89.1035 addresses age ranges for student eligibility for special education and related services. The adopted amendment updates cross references and terminology to align with changes adopted in §89.1070.

Section 89.1053 addresses procedures for the use of restraint and time-out for students receiving special education and related services. SB 133, 88th Texas Legislature, Regular Session, 2023, modified Texas Education Code (TEC), §37.0021, to prohibit a peace officer or school security personnel from restraining or using a chemical irritant spray or Taser on a student enrolled in Grade 5 or below unless the student poses a serious risk of harm to the student or another person. The adopted amendment adds new §89.1053(l) to address the requirements of SB 133.

Based on public comment, §89.1053(m) was modified at adoption for clarity to remove the exception clause that was initially proposed, as the exception of subsection (k) is already addressed in subsection (m), and the inclusion of subsection (l) may extend the applicability of the rule farther than what TEC, §37.0021, intended.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began July 19, 2024, and ended August 19, 2024, and included public hearings on July 30 and 31, 2024. Following is a summary of the public comments received and agency responses.

#### *§89.1035, Age Ranges for Student Eligibility*

**Comment:** The Texas School for the Blind and Visually Impaired (TSBVI) requested an amendment to §89.1035(b) to add that transition services and instruction in any remaining areas of the expanded core curriculum (ECC) be provided to students with visual impairments prior to termination of eligibility.

**Response:** This comment is outside the scope of rulemaking. The commenter mentions that part of the rationale behind this requested change is that sometimes students need more time in special education to work on certain ECC areas even though they have met all other graduation requirements and that adult services are not always equipped to provide the intensity of the services that are necessary. While TEA can assist with technical assistance around the issue, the requested change itself is outside the scope of rulemaking and will not be made at this time.

#### *§89.1053, Procedures for Use of Restraint and Time-Out*

**Comment:** The Texas Council of Administrators of Special Education (TCASE) requested an amendment to §89.1053(m) to include "school security personnel" in addition to "peace officers" for alignment.

**Response:** The agency disagrees. TEA does not have authority to add this category of personnel to the rule since it is based on a very specific statutory requirement.

**Comment:** Disability Rights Texas (DRTx), the Autism Society of Texas (AST), the Arc of Texas, and Coalition of Texans with Disabilities (CTD) commented in support of new §89.1053(l) for incorporating statutory provisions of SB 133, 88th Texas Legislature, Regular Session, 2023, into the rule.

**Response:** The agency agrees.

**Comment:** DRTx, AST, CTD, and the Arc of Texas requested an amendment to §89.1053(b)(2) to remove a reference to mechanical devices in the definition of restraint for alignment.

Response: The agency disagrees with making this amendment at this time but will gather a group of stakeholders to discuss any changes in this area made by the legislature during the next legislative session.

Comment: DRTx, AST, CTD, and the Arc of Texas requested changes to §89.1053(d) to clarify provisions for training with a goal to prevent and mitigate the utilization rate of restraints against students with disabilities.

Response: The agency disagrees with making this amendment at this time but will gather a group of stakeholders to discuss any changes in this area made by the legislature during the next legislative session.

Comment: An individual commented that the proposed amendment to §89.1053 is not consistent with Texas Education Code, § 37.0021, in that the proposed rule amendment seems to imply that subsection (l) applies to all peace officers, not just those employed by a school district or who are not school resource officers.

Response: The agency agrees and has modified §89.1053(m) at adoption to remove the exception clause that was initially proposed, as the inclusion of that exception may extend the applicability of the rule farther than what TEC, §37.0021, intended.

Comment: An individual requested guidance from TEA on whether a peace officer may, pursuant to department policy, handcuff a student who is at least 10 years old (and in Grade 5 or below) and has been arrested for a criminal offense.

Response: This comment is outside the scope of the proposed rulemaking, but the agency will consider whether technical assistance such as this is authorized by statute.

Comment: An individual requested an amendment to TEC, §37.0021, for clarification and alignment.

Response: This comment is outside the scope of the proposed rulemaking because, as the commenter noted, amendments to the TEC require action by the Texas Legislature.

#### *§89.1070, Graduation Requirements*

Comment: TSBVI requested an amendment to §89.1070 to add that an admission, review, and dismissal (ARD) committee would need to determine if a student with a visual impairment has received sufficient instruction in the ECC areas or that an adult service agency is able to meet the individual's needs prior to terminating a student's eligibility based on graduation. TSBVI mentioned that sometimes students need more time in special education to work on certain ECC areas, even though they have met all other graduation requirements, and that adult services are not always equipped to provide the intensity of the services that are necessary.

Response: While TEA can assist with technical assistance around this issue, the requested change is outside the scope of the proposed rulemaking.

Comment: An individual commented that the intent of the requirement for an evaluation under proposed §89.1070(f)(2) needs to be clarified. The commenter further inquired about what is expected if an evaluation is less than three years old.

Response: The agency provides the following clarification. This is not a new requirement, as it has been part of the rule previously in §89.1070(g). The text closely mirrors the requirement listed in 34 Code of Federal Regulations (CFR) §300.305(e) regarding evaluations before a change in eligibility. The text from 34 CFR §300.305(e) first states that a local education agency must evaluate a child with a disability before determining the child is no longer a child with a disability, with the exception that if a student is graduating under a regular diploma (in the rule text, this is described under subsection (b)(1)), or if the student is exceeding age eligibility, an evaluation is not required. Thus, the rule text in proposed §89.1070(f) mirrors this same concept. In terms of what the expectation is if an evaluation is less than three years old, the agency notes that 34 CFR §300.305(e) refers to an evaluation in accordance with 34 CFR §§300.304-300.311. The provisions under 34 CFR §§300.304-300.306 include evaluation procedures, additional requirements for evaluations and reevaluations, and determination of eligibility, and

§§300.307-300.311 refer to specific learning disability procedures. Note that 34 CFR §300.305 specifically references the review of existing evaluation data (REED) process that is involved in an initial or a re-evaluation.

Comment: An individual requested an amendment to §89.1070(h) and (j) to remove the reference to subsection (b)(2) and an amendment to subsection (b)(2) to restrict a student from being able to return to high school.

Response: The agency disagrees. The agency notes that the commenter stated that graduation under §89.1070(b)(2) would be the same as a general education student utilizing an individual graduation committee to graduate. This is not accurate, as the standards under §89.1070(b)(1) would include that situation. Subsection (b)(2) refers to the circumstance in which an ARD committee is determining that satisfactory performance on end-of-course assessments, beyond what is required for general education students, is not necessary.

Comment: TCASE requested an amendment to §89.1070(c)(3) to replace "necessary" with "required" for alignment.

Response: The agency agrees that a change is warranted for consistency and has revised §89.1070(c)(3) to replace the word "necessary" with "required."

Comment: An individual questioned why references to the Texas Administrative Code (TAC) chapters addressing the Texas Essential Knowledge and Skills (TEKS) were proposed for deletion from §89.1070(b)(3) and stated that we should have the same expectations for all students.

Response: The agency disagrees that this text was deleted. The text was moved to reference the authority to modify content and curriculum expectations in this circumstance, but those modifications must still be in alignment with the TAC chapters related to the TEKS.

Comment: TCASE requested an amendment to §89.1070(b)(3)(C) to add "paid or unpaid" in front of employment.

Response: The agency disagrees that a change is necessary. The ARD committee will determine this in accordance with a student's transition plan, and the agency will abide by the references described by the Office of Special Education Programs when answering postsecondary outcomes for the State Performance Plan/Annual Performance Report.

Comment: An individual requested clarification on the proposed amendment to repeal §89.1070(b)(3)(D) and whether proposed §89.1070(e) is taking the place of that former subsection.

Response: The agency provides the following clarification. If a student is unable to reach the credit, curriculum, and assessment requirements (even with the allowed modifications and authority to not require passage on state end-of-course assessments) and the student has reached maximum age eligibility, §89.1070(e) will apply, regardless of whether the student meets one of the criteria in §89.1070(b)(3)(A), (B), or (C). Changes to data collection instructions will be addressed by the agency.

Comment: TCASE requested an amendment to §89.1070(g) to clarify the requirement for school districts to include written recommendations from adult service agencies in the summary to the child "if available."

Response: The agency disagrees. The text has been in the rule for several years, and the text already states "if available," thereby meeting the same intent as TCASE is requesting.

Comment: An individual commented that proposed §89.1070(f)(1) and (2) will require a significant amount of paperwork.

Response: The agency disagrees, as the requirements in §89.1070(f)(1) and (2) have been in rule for many years and were relocated from subsection (g). Subsections (f)(1) and (2) are requirements of the Individuals with Disabilities Education Act.

Commented: An individual commented that all students who achieve progress through their individualized education program and are assessed by state of Texas assessments should be provided the opportunity to graduate even if it takes them longer.

Response: This comment is outside the scope of rulemaking; however, the agency provides the following clarification. Students are allowed to attend school through age 21 in certain circumstances, in accordance with §89.1070 and §89.1035.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code, §28.025, which establishes requirements related to high school graduation and academic achievement records; 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 conducting a full individual and initial evaluation for 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, §30.081, which establishes the legislative intent concerning regional day schools for the deaf; TEC, §37.0021, which establishes criteria for the use of confinement, restraint, seclusion, and time-out; TEC, §37.0023, which establishes criteria for prohibited aversive behavior techniques; TEC, §39.023, which establishes criteria for the agency to develop criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science; TEC, §48.003, which establishes criteria for student eligibility to the benefits of 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 establishes the use of person first respectful language required by the legislature and the Texas Legislative Council; 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 public education (FAPE) available; 34 CFR, §300.102, which establishes criteria for limitation-exception to FAPE for certain ages; 34 CFR, §300.149, which establishes the state education agency's responsibility for general supervision; 34 CFR, §300.305, which establishes criteria for additional requirements for evaluations and reevaluations; 34 CFR, §300.306, which establishes criteria for 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, §300.320, which defines the requirements for an individualized education program (IEP); 34 CFR, §300.323, which establishes the timeframe for when IEPs must be in effect; and 34 CFR, §300.600, which establishes criteria for state monitoring and enforcement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§28.025, 29.001, 29.003, 29.004, 29.005, 30.081, 37.0021, 37.0023, 39.023, 48.003, and 48.102; Texas Government Code, §392.002; and 34 Code of Federal Regulations, §§300.8, 300.100, 300.101, 300.102, 300.149, 300.305, 300.306, 300.307, 300.308, 300.309, 300.310, 300.311, 300.320, 300.323, and 300.600.

<rule>

#### §89.1035. Age Ranges for Student Eligibility.

- (a) Pursuant to state and federal law, services provided in accordance with this subchapter must be available to all eligible students ages 3-21. Services will be made available to eligible students on their third birthday. Graduation pursuant to §89.1070(b)(1) of this title (relating to Graduation Requirements) or meeting maximum age eligibility terminates a student's eligibility to receive services in accordance with this subchapter. An eligible student receiving special education services who is 21 years of age on September 1

of a school year will be eligible for services through the end of that school year or until graduation with a diploma pursuant to §89.1070 of this title, whichever comes first.

- (b) In accordance with Texas Education Code, §§29.003, 30.002(a), and 30.081, a free appropriate public education must be available from birth to students with visual impairments or who are deaf or hard of hearing.

§89.1053. Procedures for Use of Restraint and Time-Out.

- (a) Requirement to implement. In addition to the requirements of 34 Code of Federal Regulations (CFR), §300.324(a)(2)(i), school districts and charter schools must implement the provisions of this section regarding the use of restraint and time-out. In accordance with the provisions of Texas Education Code (TEC), §37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out), it is the policy of the state to treat with dignity and respect all students, including students with disabilities who receive special education services under TEC, Chapter 29, Subchapter A.
- (b) Definitions.
  - (1) Emergency means a situation in which a student's behavior poses a threat of:
    - (A) imminent, serious physical harm to the student or others; or
    - (B) imminent, serious property destruction.
  - (2) Restraint means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body.
  - (3) Time-out means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:
    - (A) that is not locked; and
    - (B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.
- (c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section and with the following limitations.
  - (1) Restraint must be limited to the use of such reasonable force as is necessary to address the emergency.
  - (2) Restraint must be discontinued at the point at which the emergency no longer exists.
  - (3) Restraint must be implemented in such a way as to protect the health and safety of the student and others.
  - (4) Restraint must not deprive the student of basic human necessities.
- (d) Training on use of restraint. Training for school employees, volunteers, or independent contractors must be provided according to the following requirements.
  - (1) A core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.
  - (2) Personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.
  - (3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.
  - (4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.

- (e) Documentation and notification on use of restraint. In a case in which restraint is used, school employees, volunteers, or independent contractors must implement the following documentation requirements.
- (1) On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.
  - (2) On the day restraint is utilized, a good faith effort must be made to verbally notify the parent(s) regarding the use of restraint.
  - (3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.
  - (4) Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the admission, review, and dismissal (ARD) committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavior improvement plan or a behavioral intervention plan.
  - (5) Written notification must be provided to the student's parent(s) or person standing in parental relation to the student for each use of restraint, and documentation of each restraint must be placed in the student's special education eligibility folder. The written notification of each restraint must include the following:
    - (A) name of the student;
    - (B) name of the individual administering the restraint;
    - (C) date of the restraint and the time the restraint began and ended;
    - (D) location of the restraint;
    - (E) nature of the restraint;
    - (F) a description of the activity in which the student was engaged immediately preceding the use of restraint;
    - (G) the behavior of the student that prompted the restraint;
    - (H) the efforts made to de-escalate the situation and any alternatives to restraint that were attempted;
    - (I) observation of the student at the end of the restraint;
    - (J) information documenting parent contact and notification; and
    - (K) one of the following:
      - (i) if the student has a behavior improvement plan or behavioral intervention plan, whether the behavior improvement plan or behavioral intervention plan may need to be revised as a result of the behavior that led to the restraint and, if so, identification of the staff member responsible for scheduling an ARD committee meeting to discuss any potential revisions; or
      - (ii) if the student does not have a behavior improvement plan or a behavioral intervention plan, information on the procedure for the student's parent or person standing in parental relation to the student to request an ARD committee meeting to discuss the possibility of conducting a functional behavioral assessment of the student and developing a plan for the student.
- (f) Clarification regarding restraint. The provisions adopted under this section do not apply to the use of physical force or a mechanical device that does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced in subsection (b)(2) of this section does not include:

- (1) physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;
  - (2) limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort;
  - (3) limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the individualized education program (IEP) as required by 34 CFR, §300.324(a)(2)(i), to promote student learning and reduce and/or prevent the need for ongoing intervention; or
  - (4) seat belts and other safety equipment used to secure students during transportation.
- (g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(3) of this section with the following limitations.
- (1) Physical force or threat of physical force must not be used to place a student in time-out.
  - (2) Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or behavior improvement plan or behavioral intervention plan if it is utilized on a recurrent basis to increase or decrease a targeted behavior.
  - (3) Use of time-out must not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.
- (h) Training on use of time-out. Training for school employees, volunteers, or independent contractors must be provided according to the following requirements.
- (1) General or special education personnel who implement time-out based on requirements established in a student's IEP and/or behavior improvement plan or behavioral intervention plan must be trained in the use of time-out.
  - (2) Newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or behavior improvement plan or behavioral intervention plan must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.
  - (3) Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies and must address the impact of time-out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.
  - (4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.
- (i) Documentation on use of time-out. Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP and/or behavior improvement plan or behavioral intervention plan. If a student has a behavior improvement plan or behavioral intervention plan, the school district must document each use of time-out prompted by a behavior of the student specified in the student's behavior improvement plan or behavioral intervention plan, including a description of the behavior that prompted the time-out. The ARD committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.
- (j) Student safety. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.

- (k) Data reporting. With the exception of actions covered by subsection (f) of this section, data regarding the use of restraint must be electronically reported to the Texas Education Agency (TEA) in accordance with reporting standards specified by TEA.
- (l) Restrictions on peace officers and security personnel. In accordance with TEC, §37.0021(j), a peace officer performing law enforcement duties or school security personnel performing security-related duties on school property or at a school-sponsored or school-related activity must not restrain or use a chemical irritant spray or Taser on a student enrolled in Grade 5 or below, unless the student poses a serious risk of harm to the student or another person.
- (m) Provisions applicable to peace officers. The provisions adopted under this section apply to a peace officer only if the peace officer is employed or commissioned by the school district or provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the school district and a local law enforcement agency, except that the data reporting requirements in subsection (k) of this section apply to the use of restraint by any peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity.
- (n) The provisions adopted under this section do not apply to:
  - (1) juvenile probation, detention, or corrections personnel; or
  - (2) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

#### §89.1070. Graduation Requirements.

- (a) Graduation under subsection (b)(1) of this section or reaching maximum age eligibility described by §89.1035 of this title (relating to Age Ranges for Student Eligibility) terminates a student's eligibility for special education services under this subchapter and Part B of the Individuals with Disabilities Education Act and entitlement to the benefits of the Foundation School Program, as provided in Texas Education Code (TEC), §48.003(a).
- (b) A student who receives special education services may graduate and be awarded a diploma if the student meets one of the following conditions.
  - (1) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117, 126-128, and 130 of this title; satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title (relating to Foundation High School Program) applicable to students in general education; and demonstrated satisfactory performance as established for students in general education in TEC, Chapters 28 and 39, on the required end-of-course assessment instruments, which could include meeting the requirements of subsection (d) of this section.
  - (2) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117, 126-128, and 130 of this title; the student has satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title applicable to students in general education; and the student's admission, review, and dismissal (ARD) committee has determined that satisfactory performance, beyond what would otherwise be required in subsections (b)(1) and (d) of this section, on the required end-of-course assessment instruments is not required for graduation.
  - (3) The student has satisfactorily completed credit requirements for graduation under the Foundation High School Program specified in §74.12 of this title through courses, one or more of which contain modified curriculum that is aligned to the standards applicable to students in general education; demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117, 126-128, and 130 of this title in accordance with modified content and curriculum expectations established in the student's individualized education program (IEP); and demonstrated satisfactory performance on the required end-of-course assessment instruments, unless the student's ARD committee has determined that satisfactory performance on the required



end-of-course assessment instruments is not required for graduation. The student must also successfully complete the student's IEP and meet one of the following conditions:

- (A) consistent with the IEP, the student has obtained full-time employment, based on the student's abilities and local employment opportunities, in addition to mastering sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district;
  - (B) consistent with the IEP, the student has demonstrated mastery of specific employability skills and self-help skills that do not require direct ongoing educational support of the local school district; or
  - (C) the student has access to services or other supports that are not within the legal responsibility of public education, including employment or postsecondary education established through transition planning.
- (c) A student receiving special education services may earn an endorsement under §74.13 of this title (relating to Endorsements) if the student:
- (1) satisfactorily completes the requirements for graduation under the Foundation High School Program specified in §74.12 of this title as well as the additional credit requirements in mathematics, science, and elective courses as specified in §74.13(e) of this title with or without modified curriculum;
  - (2) satisfactorily completes the courses required for the endorsement under §74.13(f) of this title without any modified curriculum or with modification of the curriculum, provided that the curriculum, as modified, is sufficiently rigorous as determined by the student's ARD committee; and
  - (3) performs satisfactorily as established in TEC, Chapter 39, on the required end-of-course assessment instruments unless the student's ARD committee determines that satisfactory performance is not required.
- (d) A student receiving special education services classified in Grade 11 or 12 who has taken each of the state assessments required by Chapter 101, Subchapter CC, of this title (relating to Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program) or Subchapter DD of this title (relating to Commissioner's Rules Concerning Substitute Assessments for Graduation) but failed to achieve satisfactory performance on no more than two of the assessments is eligible to receive a diploma under subsection (b)(1) of this section.
- (e) A student who has reached maximum age eligibility in accordance with §89.1035 of this title without meeting the credit, curriculum, and assessment requirements specified in subsection (b) of this section is not eligible to receive a diploma but may receive a certificate of attendance as described in TEC, §28.025(f).
- (f) A summary of academic achievement and functional performance must be provided prior to exit from public school for students who meet one of the following conditions:
- (1) a student who has met requirements for graduation specified by subsection (b)(1) of this section or who has exceeded the maximum age eligibility as described by §89.1035 of this title; or
  - (2) a student who has met requirements for graduation specified in subsection (b)(2) or (b)(3)(A), (B), or (C) of this section. Additionally, a student meeting this condition is entitled to an evaluation as described in 34 Code of Federal Regulations (CFR), §300.305(e)(1).
- (g) The summary of performance described by subsection (f) of this section must include recommendations on how to assist the student in meeting the student's postsecondary goals, as required by 34 CFR, §300.305(e)(3). This summary must also consider, as appropriate, the views of the parent and student and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals.

- (h) Students who meet graduation requirements under subsection (b)(2) or (b)(3)(A), (B), or (C) of this section and who will continue enrollment in public school to receive special education services aligned to their transition plan will be provided the summary of performance described in subsections (f) and (g) of this section upon exit from the public school system. These students are entitled to participate in commencement ceremonies and receive a certificate of attendance after completing four years of high school, as specified by TEC, §28.025(f).
- (i) Employability and self-help skills referenced under subsection (b)(3) of this section are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.
- (j) For students who graduate and receive a diploma according to subsections (b)(2) or (b)(3)(A), (B), or (C) of this section, the ARD committee must determine needed special education services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.
- (k) For purposes of this section, modified curriculum and modified content refer to any reduction of the amount or complexity of the required knowledge and skills in Chapters 110-117, 126-128, and 130 of this title. Substitutions that are specifically authorized in statute or rule must not be considered modified curriculum or modified content.