

ATTACHMENT
Text of Adopted Amendments to 19 TAC

Chapter 89. Adaptations for Special Populations

Subchapter AA. Commissioner's Rules Concerning Special Education Services

Division 2. Clarification of Provisions in Federal Regulations and State Law

§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 [~~with a regular high school diploma~~] pursuant to §89.1070(b)(1) [~~(b)(3)(D), (f)(1), (f)(2), (f)(3), or (f)(4)(D)~~] 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 [~~regular high school~~] diploma pursuant to §89.1070 [~~(b)(1), (b)(3)(D), (f)(1), (f)(2), (f)(3), or (f)(4)(D)~~] of this title, whichever comes first.
- (b) In accordance with [~~the~~] Texas Education Code [~~(TEC)~~], §§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) ² 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 [x] 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 ~~the~~ 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) ~~(4)~~ Provisions applicable to peace ~~[Peace]~~ officers. ~~The [Except for subsections (k) and (l) of this section, the [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) ~~(m)~~ 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 ~~[with a regular high school diploma]~~ under subsection ~~[subsections]~~ (b)(1) ~~[(b)(3)(D), (f)(1), (f)(2), (f)(3), or (f)(4)(D)]~~ 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 ~~[entering Grade 9 in the 2014-2015 school year and thereafter]~~ who receives special education services may graduate and be awarded a ~~[regular high school]~~ 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 ; ~~[and]~~ 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 [as well as] satisfactory performance as established for students in general education in [the] TEC, Chapters 28 and [Chapter] 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 [and] 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 ~~but~~ the student's admission, review, and dismissal (ARD) ~~[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 ~~[necessary]~~ for graduation.

- (3) 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 and]~~ 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 ~~[, as well as]~~ satisfactory performance ~~[as established in the TEC, Chapter 39,]~~ 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 ~~[necessary]~~ for graduation. The student must also successfully complete the student's IEP ~~[individualized education program (IEP)]~~ and meet one of the following conditions : []
- (A) consistent ~~[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 ~~[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 ~~[The]~~ student has access to services or other supports that are not within the legal responsibility of public education , including ~~[or]~~ employment or postsecondary education established through transition planning ~~[educational options for which the student has been prepared by the academic program]~~ .
- ~~[(D) The student no longer meets age eligibility requirements.]~~

- (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 ~~[the]~~ TEC, Chapter 39, on the required end-of-course assessment instruments unless the student's ARD committee determines that satisfactory performance is not required ~~[necessary]~~ .
- (d) A ~~[Notwithstanding subsection (c)(3) of this section, 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 ~~[an endorsement if the student has met the requirements in subsection (c)(1) and (2) 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).~~
- ~~[(e) A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a high school diploma under the Foundation High School Program as provided in §74.1021 of this title (relating to Transition to the Foundation High School Program), if the student's ARD committee determines that the student should take courses under that program and the student satisfies the requirements of that program. Subsections (e) and (d) of this section apply to a student transitioning to the Foundation High School Program under this subsection. As the TEC, §28.0258 and §39.025(a 2), modify the state assessment requirements applicable to students in general education, a student receiving special education services who is 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 may graduate if the student has satisfied all other applicable graduation requirements.]~~
- ~~[(f) A student receiving special education services who entered Grade 9 before the 2014-2015 school year may graduate and be awarded a regular high school 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 and satisfactorily completed credit requirements for graduation (under the recommended or distinguished achievement high school programs in Chapter 74, Subchapter F, of this title (relating to Graduation Requirements, Beginning with School Year 2007-2008) or Chapter 74, Subchapter G, of this title (relating to Graduation Requirements, Beginning with School Year 2012-2013)), as applicable, including satisfactory performance as established in the TEC, Chapter 39, on the required state assessments.]~~
 - ~~[(2) Notwithstanding paragraph (1) of this subsection, as the TEC, §28.0258 and §39.025(a 2), modify the state assessment requirements applicable to students in general education, a student receiving special education services who is classified in Grade 11 or 12 may graduate under the recommended or distinguished achievement high school program, as applicable, if the student 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 and has met all other applicable graduation requirements in paragraph (1) of this subsection.]~~
 - ~~[(3) 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 and satisfactorily completed credit requirements for graduation (under the minimum high school program in Chapter 74, Subchapter F or G, of this title), as applicable, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation.]~~
 - ~~[(4) 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 through courses, one or more of~~

~~which contain modified content that is aligned to the standards required under the minimum high school program in Chapter 74, Subchapter F or G, of this title, as applicable, as well as the satisfactorily completed credit requirements under the minimum high school program, including participation in required state assessments. The student's ARD committee will determine whether satisfactory performance on the required state assessments is necessary for graduation. The student graduating under this subsection 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.]~~

~~[(C) — The student has access to services that are not within the legal responsibility of public education or employment or educational options for which the student has been prepared by the academic program.]~~

~~[(D) — The student no longer meets age eligibility requirements.]~~

- (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 [All students graduating under this section must be provided with a summary of academic achievement and functional performance as described in] 34 CFR [Code of Federal Regulations (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. [An evaluation as required by 34 CFR, §300.305(e)(1), must be included as part of the summary for a student graduating under subsections (b)(2); (b)(3)(A), (B), or (C); or (f)(4)(A), (B), or (C) of this section.]~~
- (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).~~
- ~~[(h) — Students who participate in graduation ceremonies but who are not graduating under subsections (b)(2); (b)(3)(A), (B), or (C); or (f)(4)(A), (B), or (C) of this section and who will remain in school to complete their education do not have to be evaluated in accordance with subsection (g) of this section.]~~
- (i) Employability and self-help skills referenced under subsection ~~[subsections]~~ (b)(3) ~~[and (f)(4)]~~ 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 ~~[; or (b)(3)(A), (B), or (C)]~~ ~~[; or (f)(4)(A), (B), or (C)]~~ of this section, the ARD committee must determine needed special education ~~[educational]~~ 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.