

Text of Adopted Revisions 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 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 [~~§§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.

§89.1070. 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 and § 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 (c) [~~(d)~~].
 - (2) The student has demonstrated mastery of the required state standards (or district standards if greater) in Chapters 110-117 and § 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 (c) [~~(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 and § 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 may earn the distinguished level of achievement under §74.11(f) of this title (relating to High School Graduation Requirements) with modified curriculum if the student meets the requirements for an endorsement as specified by subsection (c) of this section and the student's ARD committee determines and documents in the student's IEP that the curriculum required for the distinguished level of achievement, as modified, is sufficiently rigorous.
- (e) ~~(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.
- (f) ~~(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).
- (g) ~~(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).
- (h) ~~(g)~~ The summary of performance described by subsection (g) ~~(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.

- (i) ~~(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 ~~(g)~~ ~~(f)~~ and ~~(h)~~ ~~(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).
- (j) ~~(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.
- (k) ~~(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.
- (l) ~~(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 and ~~[§] 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.

§89.1080. Regional Day School Program for the Deaf.

- (a) In accordance with Texas Education Code (TEC), Chapter 30, Subchapter D, and the state plan under TEC, §30.002, a ~~[§§30.081-30.087, local school districts shall have access to regional day school programs for the deaf operated by school districts at sites previously established by the State Board of Education. Any]~~ student who is deaf or hard of hearing ~~[with a disability that severely impairs processing linguistic information through hearing, even with recommended amplification, and that adversely affects educational performance]~~ shall be eligible for consideration for a regional day school program for the deaf ~~[the Regional Day School Program for the Deaf]~~, subject to the admission, review, and dismissal committee recommendations.
- (b) ~~The fiscal agent or program administrator of a regional day school program for the deaf must expend funds received under TEC, §48.315, on expenses necessary to administer the program.~~
- (c) ~~A fiscal agent or program administrator and each of its members must minimally address the following in their cooperative agreement:~~
 - (1) ~~the percentage of the allotment received under TEC, §48.102 and §48.1021, by the program member for a participating student, or, alternatively, an agreed upon dollar amount, that will be submitted to the fiscal agent or program administrator to assist in the provision of that student's services;~~
 - (2) ~~the method by which additional expenses shall be charged to the program member by the fiscal agent or program administrator once funds under paragraph (1) of this subsection and subsection (b) of this section are allocated toward the student's services; and~~
 - (3) ~~an assurance from the fiscal agent or program administrator that the additional expenses charged under paragraph (2) of this subsection for specific services are aligned with current regional rates for those services to the extent those rates can be calculated.~~

Division 4. Special Education Funding

§89.1127. Noneducational Community-Based Support Services Grant Program.

- (a) Definitions. The following definitions shall apply.

- (1) "At risk of being placed in a residential program" means either the student's school district has given the student's parent a prior notice in writing proposing to initiate or change the placement of the student from a day placement program to a residential program or the student's admission, review, and dismissal committee has discussed this more restrictive placement as a possibility if the student's current placement in a day placement program is determined to not provide the student a free appropriate public education. This would be confirmed with the school system prior to approving a grant for this reason. If the school district does not provide confirmation, the grant administrator must notify the parent and offer the parent an opportunity to provide information that serves as confirmation.
- (2) "Day placement program" means a day placement program approved under Texas Education Code, §29.008, which could include a student who is receiving special education and related services in or on a nonpublic facility or on a district campus or facility in a special education setting more than 50% of the instructional day.
- (3) "Parent" means a person who meets the definition of parent in 34 Code of Federal Regulations, §300.30.
- (4) "School district" includes open-enrollment charter schools.
- (b) The Texas Education Agency shall designate a regional education service center (ESC) to administer grants under this program.
- (c) Each school district must:
 - (1) inform the parent of an eligible student of the availability of grants under this program; and
 - (2) designate a staff member to assist families in accessing grants under this program.
- (d) The designated ESC shall develop or establish the following:
 - (1) an accessible application for a parent to apply for a grant;
 - (2) procedures to verify with the agency and the school district, when necessary, the student's eligibility for a grant;
 - (3) procedures related to establishing an account for a parent to access the grant funds once a student is determined eligible;
 - (4) a list of approved services and service providers;
 - (5) procedures for a parent or service provider to request placement on the list of approved services and service providers;
 - (6) procedures to pay service providers for approved services; and
 - (7) procedures for a parent to request an increase in their grant amount.
- (e) A parent of an eligible student must complete the application process and the procedures developed by the designated ESC to access the grants under this program.
- (f) Initial grant amounts under this program shall be \$5,000, subject to available funding.