

The Texas Education Agency (TEA) proposes an amendment to §89.1050, concerning the admission, review, and dismissal (ARD) committee. The proposed amendment would provide clarification to the existing regulation regarding students who register in a new school district during the summer months, as well as students who transfer to a new district during the school year. Additionally, the proposed amendment would clarify the federal requirement to ensure that a parent who is unable to meaningfully participate in English is still able to understand the proceedings of the ARD committee and receives proper notice in the parent's native language or other mode of communication.

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

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

The proposed amendment would remove an outdated cross reference to 34 Code of Federal Regulations (CFR), §300.18, in subsection (c)(2) and would amend subsections (f) and (g) to require the school district to take action, including arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is a language other than English, to ensure parent understanding when a parent is unable to meaningfully participate in the ARD process.

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

The proposed amendment to subsection (j)(1) would address requirements for a student transferring within the state in the same school year with an individualized education program (IEP) in effect in the student's previous district. The proposed amendment would also change the timeline for completing the requirements of 34 CFR, §300.323(e)(1) or (2), from 30 school days to 30 calendar days to align with the proposed new definition of "verify" in subsection (j)(6).

The proposed amendment to subsection (j)(2) would address a student who transfers from a district in another state in the same school year with an IEP in effect in the student's previous district. The proposed amendment would also change the timeline for completing the requirements of 34 CFR, §300.323(f)(2), from 30 school days to 30 calendar days to align with the proposed new definition of "verify" in subsection (j)(6).

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

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

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

Proposed new subsection (j)(6) would add a new definition of "verify" to mean that the new school district has received a copy of the student's IEP that was in effect in their previous district. Because of this specific definition, timelines associated with developing, adopting, and implementing a new IEP for a student who transfers during the school year are proposed to change from school days to calendar days in subsection (j)(1) and (2) to comply with the expectations of an ARD committee once an evaluation is complete for any student.

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

FISCAL IMPACT: Justin Porter, associate commissioner and chief program officer for special education programs and policy, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, beyond what is required by federal Individuals with Disabilities Education Act (IDEA) regulations. While a school district may be required to incur costs such as those related to holding an ARD committee meeting during the summer and providing interpreters, these costs are required not by rule but by IDEA's requirement that an IEP must be in effect at the beginning of the school year for all eligible students with a disability and that parents fully understand the IEP proceedings.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation to clarify the process a school district must follow when a student receiving special education services transfers to a different district during the school year or during the summer. Additionally, it would clarify how LEAs must ensure parents are able to meaningfully participate in an IEP and ARD committee meetings.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Porter has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide clarification to school districts on the processes required when students transfer to a new district during the school year and when students register in a new district during the summer months. Additionally, the proposal would clarify requirements to ensure meaningful parent participation. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins April 14, 2023, and ends May 15, 2023. Two public hearings to solicit testimony and input on the proposed amendment will be held at 9:00 a.m. on April 26 and May 1, 2023, via Zoom. The public may participate in either hearing virtually by linking to the hearing at

<https://zoom.us/j/7366629670> or joining by SIP at 7366629670@zoomcrc.com. The public may attend one or both hearings. Anyone wishing to testify at one of the hearings must sign in between 8:30 a.m. and 9:00 a.m. on the day of the respective hearing. Each hearing will conclude once all who have signed in have been given the opportunity to comment. Each individual's comments are limited to three minutes, and each individual may comment only once. Both hearings will be recorded and made available publicly. Questions about the hearings should be directed to kristin.mcguire@tea.texas.gov. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

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

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

<rule>

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

(a)-(b) (No change.)

(c) ARD committee membership.

(1) (No change.)

(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, [~~§300.18~~ and] §300.156.

(3)-(4) (No change.)

(d)-(e) (No change.)

(f) ~~The [If the parent is unable to speak English, the]~~ school district must provide the parent with a written notice required under subsection (d) or (e)(2) of this section in the parent's native language, unless it is clearly not feasible to do so. If the parent's native language is not a written language, the school district must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication so that the parent understands the content of the notice.

(g) All members of the ARD committee must have the opportunity to participate in a collaborative manner in developing the IEP. The school district must take whatever action is 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)-(4) (No change.)

(h)-(i) (No change.)

(j) A school district must comply with the following for a student who is new to the school district.

(1) When a student transfers to a new school district within the state in the same school year and the parents or previous school district verifies [verify] that the student had an IEP that was in effect in the previous district [was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special

~~education services~~], the new school district must meet the requirements of 34 CFR, §300.323(e), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §300.323(e)(1) or (2), is 30 calendar ~~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~~ ~~[verify]~~ that the student had an IEP that was in effect in the previous district ~~[was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services]~~, the new school district must meet the requirements of 34 CFR, §300.323(f), regarding the provision of special education services. If the new school district determines that an evaluation is necessary, the evaluation is considered a full individual and initial evaluation and must be completed within the timelines established by §89.1011(c) and (e) of this title. The timeline for completing the requirements in 34 CFR, §300.323(f)(2), if appropriate, is 30 calendar days from the date of the completion of the evaluation report. If the school district determines that an evaluation is not necessary, the timeline for completing the requirements outlined in 34 CFR, §300.323(f)(2), is 30 calendar ~~school~~ days from the date the student is verified as being a student eligible for special education services.
- (3) In accordance with ~~[TEC, §25.002, and]~~ 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 ~~[in which the student was previously enrolled]~~ must furnish the new school district with a copy of the student's records, including the student's special education records, not later than the 10th working day after the date a request for the information is received by the previous school district.
- (4) A student ~~[with a disability who has an IEP in place from a previous in- or out-of-state school district and]~~ who registers ~~[enrolls]~~ in a new school district during the summer is not considered a transfer student for the purposes of this subsection or for 34 CFR, §300.323(e) or (f). For these students, ~~if the parents or in- or out-of-state school district verifies before the new school year begins that the student had an IEP that was in effect in the previous district,~~ the new school district must implement the IEP from the previous school district in full on the first day of class of the new school year or must convene an ARD committee meeting during the summer to revise the student's IEP for implementation on the first day of class of the new school year. ~~If the student's eligibility for special education and related services cannot be verified before the start of the new school year, the timelines in paragraphs (1) and (2) of this subsection apply to the student.~~
- (5) ~~In the case of a student described by paragraph (4) of this subsection, if the new district wishes to convene an ARD committee meeting to consider revision to the student's IEP before the beginning of the school year, the new district must determine whether the parent will agree to waive the requirement in subsection (d) of this section that the written notice of the ARD committee meeting must be provided at least five school days before the meeting. If the parent agrees to a shorter timeframe, the new district must make every reasonable effort to hold the ARD committee meeting prior to the first day of the new school year if the parent agrees to the meeting time.~~
- (6) ~~For the purposes of this subsection, "verify" means that the new school district has received a copy of the student's IEP that was in effect in the previous district.~~
- (7) ~~While the new school district waits for verification, the new school district must take reasonable steps to provide, in consultation with the student's parents, services comparable to those the student received from the previous district if the new school district has been informed by the previous school district of the student's special education and related services and placement.~~

(k) (No change.)