

The Texas Education Agency (TEA) proposes amendments to §§89.1005, 89.1040, 89.1075, 89.1121, and 89.1125; the repeal of §89.1092 and §89.1094; and new §89.1092 and 89.1094, concerning special education services. The proposed revisions would clarify and align requirements related to instructional arrangements, eligibility and placement, general program operations, and the distribution and allowable use of state special education funds and would update approval, oversight, reporting, and funding requirements for residential and day placement programs to align with House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025.

BACKGROUND INFORMATION AND JUSTIFICATION: The proposed amendment to §89.1005 would update provisions governing instructional arrangements and educational environments to align with the revised state special education funding framework enacted by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025. The proposed amendment would update terminology, clarify transition-period reporting requirements, and specify how admission, review, and dismissal (ARD) committee placement decisions are reported through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) to support consistent statewide reporting under the revised funding framework.

The proposed amendment to §89.1040 would update eligibility criteria for special education and related services to support consistent statewide implementation. To improve clarity, the proposed amendment would address evaluation procedures and eligibility determinations, including requirements for full individual and initial evaluations and reevaluations. Together, the proposed changes would strengthen consistent and accurate identification of students eligible for special education and related services across the state.

The proposed amendment to §89.1075 would address general program requirements and local district procedures to support consistent statewide implementation. The proposed amendment would update statutory cross references, clarify documentation and contracting requirements, revise the timeline for providing prior written notice to parents, and specify training requirements for district transition and employment designees.

Section 89.1092 would be repealed and proposed as a new rule. The new rule would reorganize and clarify requirements applicable to residential placement programs used to provide free appropriate public education (FAPE) to students with disabilities. The new language would also clarify approval, reapproval, and monitoring requirements for providers; distinguish between ARD committee-placed and non-ARD committee-placed residential placements; and update requirements related to contracts, onsite monitoring, notice to TEA, and funding. Funding and reporting provisions would be aligned with statutory changes enacted by HB 2 and SB 569, 89th Texas Legislature, Regular Session, 2025, while other revisions would clarify existing oversight and procedural expectations specific to residential placements.

Section 89.1094 would be repealed and proposed as a new rule. The new rule would revise the structure and oversight of public and private day placement programs used to provide FAPE. The new language would also clarify distinctions between district-operated, non-district-operated, and private day placement programs; refine approval, reapproval, and monitoring requirements for program administrators and providers; and update contracting, onsite reviews, notice, and funding eligibility provisions. The provisions would align day placement program requirements with HB 2 and SB 569, 89th Texas Legislature, Regular Session, 2025, by reflecting the revised state special education funding framework and eligibility for the day placement allotment, while also organizing and clarifying existing administrative and procedural requirements.

The proposed amendment to §89.1121 would update the distribution of state special education funds to reflect the transition from instructional arrangements to tiers and service groups in accordance with HB 2 and SB 569, 89th Texas Legislature, Regular Session, 2025. The amendment would require state special education funding to be based on assigned tiers and service groups under Texas Education Code (TEC), §48.102 and §48.1021; establish transition-year funding for the 2026-2027 school year under TEC, §48.1022; and clarify reporting through the Student Attendance Accounting Handbook adopted under 19 TAC §129.1025. These changes would support consistent statewide implementation of the tier- and service group-based funding structure.

The proposed amendment to §89.1125 would clarify how state special education funds may be used under the revised funding framework enacted by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025. The proposed amendment would specify permissible uses of state special education funds and reinforce that such funds must be used to support special education and related services in accordance with students' individualized education

program and applicable funding requirements. The proposed changes would promote transparency, consistency, and compliance in the use of state special education funds.

FISCAL IMPACT: Jennifer Alexander, associate commissioner for special populations and student supports, 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, required to comply with the proposal.

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 create new regulations and expand, limit, and repeal existing regulations by updating provisions related to instructional arrangements and educational environments; clarifying eligibility and evaluation requirements for special education services; revising approval, oversight, and monitoring requirements for residential placement programs and day placement programs; aligning the distribution and allowable use of state special education funds with the revised tier- and service group-based funding framework; and making technical and clarifying updates to general program requirements, including notice timelines, contracting provisions, and transition and employment designee training requirements.

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 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: Ms. Alexander 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 improve clarity, consistency, and transparency in the statewide administration of special education. The changes would support more uniform reporting and interpretation of placement decisions, better alignment with the revised special education funding framework, and more consistent identification and evaluation of students eligible for special education services. The revisions would also strengthen oversight and accountability for residential and day placement programs, helping ensure placements are used appropriately to provide FAPE and to support continuity of services for students. In addition, the revisions would promote clearer and more accountable use of state special education funds by supporting consistent implementation of tier- and service group-based funding and clarifying allowable expenditures. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: While school districts, including open-enrollment charter schools, currently report instructional arrangements for students receiving special education services, the proposed revisions introduce new required reporting elements and distinctions that constitute a data reporting impact. Beginning with the 2026-2027 school year, districts will be required to report student placement decisions using the educational environment data element, rather than instructional setting, and to report newly established tier and service group(s) aligned to funding under TEC, §48.102 and §48.1021. In addition, the rules would require districts to distinguish between ARD committee-placed and non-ARD committee-placed residential placements, as well as between public and

private day placement programs, for TSDS PEIMS reporting purposes. Although these reporting requirements build on existing placement concepts, they represent new data elements, categorizations, and reporting obligations that districts must implement to comply with the proposed rules.

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: TEA requests public comments on the proposal, including, per Texas Government Code, §2001.024(a)(8), information related to the cost, benefit, or effect of the proposed rule and any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person. The public comment period on the proposal begins May 15, 2026, and ends June 15, 2026. 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/). Public hearings will be conducted to solicit testimony and input on the proposed revisions at 9:30 a.m. on June 4 and 5, 2026. The public may participate in either hearing virtually by linking to the hearing at <https://us02web.zoom.us/j/88479172452>. Anyone wishing to testify must be present at 9:30 a.m. and indicate to TEA staff their intent to comment and are encouraged to also send written testimony to sped@tea.texas.gov. Each hearing will conclude once all who have signed in have been given the opportunity to comment. Questions about the hearing should be directed to Derek Hollingsworth, Special Populations Policy and Compliance, Derek.Hollingsworth@tea.texas.gov.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for a full individual and initial evaluation; TEC, §29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes contracts for services to students with disabilities in a residential or day placement program; TEC, §29.011, which establishes transition planning; TEC, §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the commissioner as necessary to implement TEC, Chapter 29, Subchapter A; TEC, §48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025, which establishes the funding framework for students receiving special education services under the Foundation School Program; TEC, §48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education service groups used in determining funding under the Foundation School Program; TEC, §48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education transition year funding; TEC, §48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes day placement program or cooperative funding; 34 CFR, §300.101, which establishes the requirement that free appropriate public education (FAPE) be available to all eligible children with disabilities; 34 CFR, §§300.114-300.118, which establish least restrictive environment requirements, including placement decisions and the provision of services in settings with nondisabled peers to the maximum extent appropriate; 34 CFR, §300.115, which requires public agencies to ensure a continuum of alternative placements is available to meet the needs of children with disabilities; 34 CFR, §300.129, which addresses the responsibilities of public agencies for children placed in or referred to private schools or facilities; 34 CFR, §300.147, which establishes state educational agency responsibilities for ensuring compliance and monitoring private school placements; 34 CFR, §§300.301-300.311, which establish requirements for evaluations, reevaluations, and eligibility determinations, including timelines and evaluation procedures; and 34 CFR, §300.503, which requires public agencies to provide parents prior written notice before proposing or refusing actions related to identification, evaluation, educational placement or the provision of FAPE.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§29.001, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.004; 29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.011; 29.026, as added by HB 2 and SB 568, 89th Texas Legislature, 2025; 48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025; 48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session,

2025; and 34 Code of Federal Regulations (CFR), §§300.101, 300.114-300.118, 300.115, 300.129, 300.147, 300.301-300.311, and 300.503.

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§89.1005. Instructional Arrangements and Educational Environments [Settings] .

- (a) For the 2026-2027 school year, school districts and open-enrollment charter schools shall report instructional arrangement or instructional setting codes as described by §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook).
- (b) Effective September 1, 2026, placement decisions made by an admission, review, and dismissal (ARD) committee must be reported as a specific educational environment as these are defined and described in the Texas Student Data System Public Education Information Management System. An instructional arrangement reported in the 2025-2026 school year will continue to be reported until the student's ARD committee develops a new or updated individualized education program affecting placement in the 2026-2027 school year. Based on the funding transition required by Texas Education Code (TEC), §48.1022, and transition materials produced by the Texas Education Agency, instructional arrangements may continue to be reported through the 2026-2027 school year. See §89.1121 of this title (relating to Distribution of State Funds) for more information.
- (c) For purposes of determining the time spent outside the general education setting as described in TEC, §48.051(a), the following definitions shall apply.
- (1) "General education classroom" or "setting" includes a classroom or setting where a student is educated alongside peers without disabilities and receives instruction aligned to the student's enrolled grade level curriculum, regardless of whether the special education and related services are provided in that environment. Typically, for students enrolled in kindergarten and above, general education classrooms or settings are generally based on the time spent in those classrooms or settings during the instructional day. For children between the ages of three through five who are not yet enrolled in kindergarten, general education classrooms or settings are typically referred to as regular early childhood programs and are based on at least 50% of the children enrolled or assigned to the classroom or setting being children without disabilities.
- (2) "Special education classroom" or "setting" includes a classroom or setting where the primary purpose is the delivery of specially designed instruction to students with disabilities separate from their peers without disabilities.
- (d) Section 89.1121 of this title explains when placements in general education or special education classrooms or settings, such as residential placements, will be directly included in the calculation of the state special education allotment under TEC, §§48.102, 48.1021, and 48.1022.
- (e) Instructional day has the meaning assigned to it in §129.1025 of this title.
- ~~[(a) — The following terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:]~~
- ~~[(1) — Instructional arrangement/setting. Instructional arrangement/setting refers to the arrangement listed in Texas Education Code (TEC), §48.102, and the weight assigned to it that is used to generate funds from the state special education allotment.]~~
- ~~[(2) — Instructional day. Instructional day has the meaning assigned to it in §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook).]~~
- (f) ~~(f)~~ Each school district must provide special education and related services to eligible students with disabilities in order to meet the unique needs of those students in accordance with 34 Code of Federal Regulations, §§300.114-300.118, and state law.
- (g) ~~(g)~~ Subject to §89.1075(f) of this title (relating to General Program Requirements and Local District Procedures), ~~[for the purpose of determining the student's instructional arrangement/setting,]~~ a student receiving special education and related services must have available an instructional day commensurate

with that of students who are not receiving special education and related services and only modify the instructional day when determined necessary by the ARD [admission, review, and dismissal (ARD)] committee. [A student's ARD committee shall determine the student's instructional arrangement/setting based on the percentage of the student's instructional day that the student receives special education and related services in a setting other than general education.]

[(d) While this section uses the names of the instructional arrangements/settings as they are described in TEC, §48.102, there may be additional instructional arrangement/setting codes that are created by the Texas Education Agency (TEA) within the student attendance accounting requirements defined in §129.1025 of this title. While the codes may be titled differently, each will align to an arrangement/setting as described in this section and in TEC, §48.102.]

[(e) Instructional arrangements/settings shall be based on the individual needs and individualized education programs (IEPs) of eligible students receiving special education and related services and shall include the following:]

[(1) Mainstream. This instructional arrangement/setting is for providing special education and related services to a student in the general education classroom in accordance with the student's IEP. Qualified special education personnel must be involved in the implementation of the student's IEP through the provision of direct, indirect, and/or support services to the student and/or the student's general education classroom teacher(s) necessary to enrich the general education classroom and enable student success. The student's IEP must specify the services that will be provided by qualified special education personnel to enable the student to appropriately progress in the general education curriculum and/or appropriately advance in achieving the goals set out in the student's IEP. Examples of services provided in this instructional arrangement include, but are not limited to, direct instruction, helping teacher, team teaching, co-teaching, interpreter, educational aides, curricular or instructional modifications/accommodations, special materials/equipment, positive classroom behavioral interventions and supports, consultation with the student and his/her general education classroom teacher(s) regarding the student's progress in general education classes, staff development, and reduction of ratio of students to instructional staff. Monitoring student progress in and of itself is not a special education service; this cannot be listed as the only specially designed instruction documented in a student's IEP.]

[(2) Homebound. This instructional arrangement/setting, also referred to as home based instruction, is for providing special education and related services to students who are served at their home for the following reasons:]

[(A) Medical reasons. Homebound instruction is used for a student whose ARD committee has received medical documentation from a physician licensed to practice in the United States that the student is expected to incur full-day absences from school for a minimum of four weeks for medical reasons, which could include psychological disorders, and the ARD committee has determined that this is the most appropriate placement for the student. The weeks do not have to be consecutive. For the ARD committee to approve this placement, the committee will review documentation related to anticipated periods of student confinement to the home, as well as whether the student is determined to be chronically ill or any other unique medical circumstances that would require this placement in order to provide a free appropriate public education (FAPE) to the student. Documentation by a physician does not guarantee the placement of a student in this instructional arrangement/setting, as the student's ARD committee shall determine whether the placement is necessary for the provision of FAPE, and, if so, will determine the amount of services to be provided to the student at home in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in subsection (c) of this section.]

[(B) Children ages three through five years of age. Home based instruction may be used for children ages three through five when determined appropriate by the child's ARD committee and as documented in the student's IEP. While this setting would generate the same weight as the homebound instructional arrangement/setting, the data on this setting may be collected differently than the medical homebound arrangement/setting.]

- ~~[(C) — Students confined to or educated in hospitals. This instructional arrangement/setting also applies to school districts described in TEC, §29.014.]~~
- ~~[(3) — Hospital class. This instructional arrangement/setting is for providing special education and related services by school district personnel:]~~
- ~~[(A) — at a hospital or other medical facility; or]~~
- ~~[(B) — at a residential care and treatment facility not operated by the school district. If a student residing in the facility is provided special education and related services at a school district campus but the student's parent is not a school district resident, the student is considered to be in the residential care and treatment facility instructional arrangement/setting. If a student residing in the facility is provided special education and related services at a school district campus and the parent, including a surrogate parent, is a school district resident, the student's instructional arrangement/setting would be assigned based on the services that are provided at the campus on the same basis as a resident student residing with his or her parents.]~~
- ~~[(4) — Speech therapy. This instructional arrangement/setting is for providing speech therapy services whether in a general education classroom or in a setting other than a general education classroom:]~~
- ~~[(A) — When the only special education service provided to a student is speech therapy, then this instructional arrangement may not be combined with any other instructional arrangement. If a student's IEP indicates that a special education teacher is involved in the implementation of the student's IEP but there is no indication of how that teacher provides a special education service, the student is in the speech therapy instructional arrangement/setting.]~~
- ~~[(B) — When a student receives speech therapy and a related service but no other special education service, the student is in the speech therapy instructional arrangement/setting.]~~
- ~~[(5) — Resource room/services. This instructional arrangement/setting is for providing special education and related services to a student in a setting other than general education for less than 50% of the regular school day. For funding purposes, this will be differentiated between the provision of special education and related services to a student in a setting other than general education for less than 21% of the instructional day and special education and related services provided to a student in a setting other than general education for at least 21% of the instructional day but less than 50% of the instructional day.]~~
- ~~[(6) — Self contained (mild, moderate, or severe) regular campus. This instructional arrangement/setting is for providing special education and related services to a student who is in a setting other than general education for 50% or more of the regular school day on a regular school campus. For funding purposes, mild/moderate will be considered at least 50% but no more than 60% of the student's instructional day, and severe will be considered more than 60% of the student's instructional day.]~~
- ~~[(7) — Off home campus. This instructional arrangement/setting is for providing special education and related services to the following:]~~
- ~~[(A) — a student at South Texas Independent School District or Windham School District;]~~
- ~~[(B) — a student who is one of a group of students from one or more school districts served in a single location in another school district when a FAPE is not available in the sending district;]~~
- ~~[(C) — a student in a community setting, facility, or environment operated by a school district that prepares the student for postsecondary education/training, competitive integrated employment, and/or independent living in coordination with the student's individual transition goals and objectives;]~~
- ~~[(D) — a student in a community setting or environment not operated by a school district that prepares the student for postsecondary education/training, competitive integrated~~

employment, and/or independent living in coordination with the student's individual transition goals, with regularly scheduled instruction or direct involvement provided by school district personnel;]

[(E) — a student in a facility not operated by a school district with instruction provided by school district personnel; or]

[(F) — a student in a self-contained program at a separate campus operated by the school district that provides only special education and related services.]

[(8) — Nonpublic day school. This instructional arrangement/setting is for providing special education and related services to students through a contractual agreement with a nonpublic school when the school district is unable to provide a FAPE for the student. This instructional arrangement/setting includes the providers listed in §89.1094 of this title (relating to Contracting for Nonpublic or Non-District Operated Day Placements for the Provision of FAPE).]

[(9) — Vocational adjustment class. Although referred to as a class, this instructional arrangement/setting is a support program for providing special education and related services to a student who is placed on a job (paid or unpaid unless otherwise prohibited by law) with regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP. This instructional arrangement/setting shall be used in conjunction with the student's transition plan, as documented in the student's IEP, and may include special education services received in career and technical education work based learning programs.]

[(10) — Residential care and treatment facility (not school district resident). For purposes of this section, residential care and treatment facility refers to a facility at which a student with a disability currently resides, who was not placed at the facility by the student's ARD committee, and whose parent or guardian does not reside in the district providing educational services to the student. This instructional arrangement/setting is for providing special education and related services to a student on a school district campus who resides in a residential care and treatment facility and whose parents do not reside within the boundaries of the school district that is providing educational services to the student. If the instruction is provided at the facility, rather than on a school district campus, the instructional arrangement is considered to be the hospital class arrangement/setting rather than this instructional arrangement, or if the student resides at a state-supported living center, the instructional arrangement will be considered the state school arrangement/setting. Students with disabilities who reside in these facilities may be included in the average daily attendance of the district in the same way as all other students receiving special education.]

[(11) — State supported living center (referred to as state school in TEC, §48.102). This instructional arrangement/setting is for providing special education and related services to a student who resides at a state supported living center when the services are provided at the state supported living center location. If services are provided on a local school district campus, the student is considered to be served in the residential care and treatment facility arrangement/setting.]

[(f) — Children from birth through the age of two with visual impairments (VI), who are deaf or hard of hearing (DHH), or who are deaf blind (DB) must be enrolled at the parent's request by a school district when the district becomes aware of a child needing services. The appropriate instructional arrangement for students from birth through the age of two with VI, DHH, or DB shall be determined in accordance with the individualized family services plan, current attendance guidelines, and the agreement memorandum between TEA and Texas Health and Human Services Commission Early Childhood Intervention (ECI) Services. However, the following guidelines shall apply:]

[(1) — A home based instructional arrangement/setting is used when the child receives services at home. This arrangement/setting would generate the same weight as the homebound instructional arrangement/setting, and average daily attendance (ADA) funding will depend on the number of hours served per week.]

[(2) — A center based instructional arrangement/setting is used when the child receives services in a day care center, rehabilitation center, or other school/facility contracted with the Health and Human

~~Services Commission (HHSC) as an ECI provider/program. This arrangement/setting would generate the same weight as the self contained, severe instructional arrangement/setting, and ADA funding will depend on the number of hours served per week.]~~

~~[(3) — Funding may only be claimed if the district is involved in the provision of the ECI and other support services for the child. Otherwise, the child would be enrolled and indicated as not in membership for purposes of funding. If the district is contracted with HHSC as an ECI provider, funding would be generated under that contract.]~~

~~[(g) — For nonpublic day and residential placements, the school district must comply with the requirements under §89.1092 of this title (relating to Contracting for Nonpublic Residential Placements for the Provision of a Free Appropriate Public Education (FAPE)) or §89.1094 of this title, as appropriate.]~~

~~[(h) — Other program options that may be considered for the delivery of special education and related services to a student may include the following:]~~

~~[(1) — contracts with other school districts; and]~~

~~[(2) — other program options as approved by TEA.]~~

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STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for a full individual and initial evaluation; TEC, §29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes contracts for services to students with disabilities in a residential or day placement program; TEC, §29.011, which establishes transition planning; TEC, §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the commissioner as necessary to implement TEC, Chapter 29, Subchapter A; TEC, §48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025, which establishes the funding framework for students receiving special education services under the Foundation School Program; TEC, §48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education service groups used in determining funding under the Foundation School Program; TEC, §48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education transition year funding; TEC, §48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes day placement program or cooperative funding; 34 CFR, §300.101, which establishes the requirement that free appropriate public education (FAPE) be available to all eligible children with disabilities; 34 CFR, §§300.114-300.118, which establish least restrictive environment requirements, including placement decisions and the provision of services in settings with nondisabled peers to the maximum extent appropriate; 34 CFR, §300.115, which requires public agencies to ensure a continuum of alternative placements is available to meet the needs of children with disabilities; 34 CFR, §300.129, which addresses the responsibilities of public agencies for children placed in or referred to private schools or facilities; 34 CFR, §300.147, which establishes state educational agency responsibilities for ensuring compliance and monitoring private school placements; 34 CFR, §§300.301-300.311, which establish requirements for evaluations, reevaluations, and eligibility determinations, including timelines and evaluation procedures; and 34 CFR, §300.503, which requires public agencies to provide parents prior written notice before proposing or refusing actions related to identification, evaluation, educational placement or the provision of FAPE.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§29.001, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.004; 29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.011; 29.026, as added by HB 2 and SB 568, 89th Texas Legislature, 2025; 48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025; 48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; and 34 Code of Federal Regulations (CFR), §§300.101, 300.114-300.118, 300.115, 300.129, 300.147, 300.301-300.311, and 300.503.

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§89.1040. Eligibility Criteria.

- (a) Special education and related services. To be eligible to receive special education and related services, a student must be a "child with a disability," as defined in 34 Code of Federal Regulations (CFR), §300.8(a), subject to the provisions of 34 CFR, §300.8(c), ~~the~~ Texas Education Code (TEC), Chapter 29, Subchapter A, and this section. The provisions in this section specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law.
- (b) Eligibility determination. The determination of whether a student is eligible for special education and related services is made by the student's admission, review, and dismissal (ARD) committee. Any evaluation or re-evaluation of a student must be conducted in accordance with 34 CFR, §§300.301-300.306 and 300.122. The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility must include, but is not limited to, the following:

- (1) a licensed specialist in school psychology (LSSP)/school psychologist, an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability; or
 - (2) a licensed or certified professional for a specific eligibility category defined in subsection (c) of this section.
- (c) Eligibility definitions.
- (1) Autism. A student with autism is one who has been determined to meet the criteria for autism as stated in 34 CFR, §300.8(c)(1). A determination of whether a student meets the criteria for autism as stated in 34 CFR, §300.8(c)(1), cannot require that the student meets the requirements for a medical/psychological diagnosis of autism. The absence of other characteristics often associated with autism listed in 34 CFR, 300.8(c)(1), does not exclude a student from meeting eligibility as a student with autism. The team's written report of evaluation must include specific recommendations for communication, social interaction, and positive behavioral interventions and strategies.
 - (2) Deaf-blindness. A student with deaf-blindness is one who has been determined to meet the criteria for deaf-blindness as stated in 34 CFR, §300.8(c)(2). In meeting the criteria stated in 34 CFR, §300.8(c)(2), a student with deaf-blindness is one who, based on the evaluations specified in subsection (c)(3) and (12) of this section:
 - (A) meets the eligibility criteria for a student who is deaf or hard of hearing specified in subsection (c)(3) of this section and visual impairment specified in subsection (c)(12) of this section;
 - (B) meets the eligibility criteria for a student with a visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, but a speech/language therapist, a certified speech and language therapist, or a licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected;
 - (C) has documented hearing and visual losses that, if considered individually, may not meet the requirements for a student who is deaf or hard of hearing or for visual impairment, but the combination of such losses adversely affects the student's educational performance; or
 - (D) has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that, without the provision of special education services, will adversely affect the student's educational performance.
 - (3) Deaf or hard of hearing.
 - (A) A student who is deaf or hard of hearing is one who has been determined to meet the criteria for deafness as stated in 34 CFR, §300.8(c)(3), or for students who have a hearing impairment as stated in 34 CFR, §300.8(c)(5). The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility based on being deaf or hard of hearing must include an audiological evaluation performed by a licensed audiologist and a communication assessment completed by the multidisciplinary team. The evaluation data must include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended hearing assistive technology.
 - (B) A child under three years of age meets the criteria for deaf or hard of hearing if the student's record indicates that the child is experiencing a developmental delay because of hearing loss or impairment, or the child has a physical or mental condition that has a high probability of resulting in a developmental delay and a sensory impairment, in accordance with 34 CFR, §303.21.
 - (4) Emotional disability. A student with an emotional disability is one who has been determined to meet the criteria for emotional disturbance as stated in 34 CFR, §300.8(c)(4). The written report of evaluation must include specific recommendations for positive behavioral supports and

interventions. The term emotional disability is synonymous with the term emotional disturbance and serious emotional disturbance, as these terms are used in federal or state law pertaining to students eligible for special education and related services.

(5) Intellectual disability. A student with an intellectual disability is one who has been determined to meet the criteria for an intellectual disability as stated in 34 CFR, §300.8(c)(6). In meeting the criteria stated in 34 CFR, §300.8(c)(6), a student with an intellectual disability is one who:

(A) has been determined to have significantly sub-average intellectual functioning as measured by :

(i) a standardized, individually administered test of cognitive ability in which the overall test score is at least two standard deviations below the mean, when taking into consideration the standard error of measurement of the test; or [and]

(ii) the convergence of a body of evidence from multiple direct and indirect sources when the multidisciplinary team determines that standardized measures of cognitive ability are invalid, inaccessible, or inappropriate; and

(B) concurrently exhibits deficits in at least two of the following areas of adaptive behavior: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.

(6) Multiple disabilities.

(A) A student with multiple disabilities is one who has been determined to meet the criteria for multiple disabilities as stated in 34 CFR, §300.8(c)(7). In meeting the criteria stated in 34 CFR, §300.8(c)(7), that a combination of impairments causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments, a student with multiple disabilities is one who has a combination of disabilities defined in this section and who meets all of the following conditions:

(i) the student's disabilities are expected to continue indefinitely; and

(ii) the disabilities severely impair performance in two or more of the following areas:

(I) psychomotor skills;

(II) self-care skills;

(III) communication;

(IV) social and emotional development; or

(V) cognition.

(B) Students who have more than one of the disabilities defined in this section but who do not meet the criteria in subparagraph (A) of this paragraph must not be classified or reported as having multiple disabilities.

(C) Multiple disabilities does not include deaf-blindness.

(7) Orthopedic impairment. A student with an orthopedic impairment is one who has been determined to meet the criteria for orthopedic impairment as stated in 34 CFR, §300.8(c)(8). A student's eligibility based on an orthopedic impairment must include a medical diagnosis provided by a licensed physician.

(8) Other health impairment. A student with other health impairment is one who has been determined to meet the criteria for other health impairment due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Disorder as stated in 34 CFR, §300.8(c)(9). A student's eligibility based on other health impairment must include identification or confirmation of the student's chronic or

acute health problem provided by a licensed physician, a physician assistant, or an advanced practice registered nurse with authority delegated under Texas Occupations Code, Chapter 157.

- (9) Specific learning disability.
- (A) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; intellectual disability; emotional disability; or environmental, cultural, or economic disadvantage.
- (B) A student with a specific learning disability is one who:
- (i) has been determined through a variety of assessment tools and strategies to meet the criteria for a specific learning disability as stated in 34 CFR, §300.8(c)(10), in accordance with the provisions in 34 CFR, §§300.307-300.311;
 - (ii) when provided with learning experiences and instruction appropriate for the student's age or state-approved grade-level standards as indicated by performance on multiple measures such as in-class tests, grade average over time (e.g. six weeks or semester), repeated performance on progress monitoring measures, norm- or criterion-referenced tests, and statewide assessments, does not achieve adequately for the student's age or to meet state-approved grade-level standards in one or more of the following areas:
 - (I) oral expression;
 - (II) listening comprehension;
 - (III) written expression, which includes, but is not limited to, ~~may include~~ dysgraphia;
 - (IV) basic reading skill, which includes ~~may include~~ dyslexia;
 - (V) reading fluency skills, which includes ~~may include~~ dyslexia;
 - (VI) reading comprehension;
 - (VII) mathematics calculation; or
 - (VIII) mathematics problem solving;
 - (iii) meets one of the following criteria:
 - (I) does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in clause (ii)(I)-(VIII) of this subparagraph when using a process based on the student's response to scientific, research-based intervention; or
 - (II) exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, state-approved grade-level standards, or intellectual development that is determined to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 CFR, §300.304 and §300.305; and
 - (iv) does not meet the findings under clauses (ii) and (iii) of this subparagraph primarily as the result of:
 - (I) a visual, hearing, or motor disability;
 - (II) an intellectual disability;

- (III) emotional disability;
 - (IV) cultural factors;
 - (V) environmental or economic disadvantage; or
 - (VI) being emergent bilingual.
- (C) As part of the evaluation described in subparagraph (B) of this paragraph and 34 CFR, §§300.304-300.311, the presence of a significant variance among specific areas of cognitive function or between specific areas of cognitive function and academic achievement is not required when determining whether a student has a significant learning disability.
- (D) In order to ensure that underachievement by a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics, the following must be considered:
- (i) data that demonstrates the student was provided appropriate instruction in reading (as described in 20 United States Code [~~U.S.C.~~], §6368(3)), and/or mathematics within general education settings delivered by qualified personnel; and
 - (ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction, which must be provided to the student's parents. Data-based documentation of repeated assessments may include, but is not limited to, intervention progress monitoring results and reports, in-class tests on grade-level curriculum, or other regularly administered assessments. Intervals are considered reasonable if consistent with the assessment requirements of a student's specific instructional program.
- (E) The school district must ensure that the student is observed in the student's learning environment, including the general education classroom setting, to document the student's academic performance and behavior in the areas of difficulty. In determining whether a student has a specific learning disability, the multidisciplinary team must decide to either use information from an observation in routine classroom instruction and monitoring of the student's performance that was conducted before the student was referred for an evaluation or have at least one of the members described in subsection (b) or (c)(9)(F) of this section conduct an observation of the student's academic performance in the general education classroom after the student has been referred for an evaluation and the school district has obtained parental consent consistent with 34 CFR, §300.300(a). In the case of a student of less than school age or out of school, a member described in subsection (b) or (c)(9)(F) of this section must observe the student in an environment appropriate for a student of that age.
- (F) The determination of whether a student suspected of having a specific learning disability is a child with a disability as defined in 34 CFR, §300.8, must be made by the student's parents and a team of qualified professionals, which must include at least one person qualified to conduct individual diagnostic examinations of children such as a licensed specialist in school psychology/school psychologist, an educational diagnostician, a speech-language pathologist, or a remedial reading teacher and one of the following:
- (i) the student's general education teacher;
 - (ii) if the student does not have a general education teacher, a general education classroom teacher qualified to teach a student of his or her age; or
 - (iii) for a student of less than school age, an individual qualified by the Texas Education Agency to teach a student of his or her age.

- (G) Suspicion, and the identification, of dyslexia or dysgraphia, in addition to the requirements of subparagraphs (A)-(F) of this paragraph, must include consideration of the following:
- (i) when the specific learning disability of dyslexia is suspected or characteristics of dyslexia have been observed from a reading instrument administered under TEC, §28.0063 [~~§28.006~~], or a dyslexia screener under TEC, §38.003, the team established under subsections (b) and (c)(9)(F) of this section must include a professional who meets the requirements under TEC, §29.0031(b), and §74.28 of this title (relating to Students with Dyslexia and Related Disorders), including any handbook adopted in the rule;
 - (ii) an evaluation for dyslexia or dysgraphia must include all of the domains or other requirements listed in TEC, §38.003, and §74.28 of this title, including any handbook adopted in the rule;
 - (iii) when identifying dyslexia and determining eligibility or continued eligibility for special education and related services, the ARD [admission, review, and dismissal (ARD)] committee must include a professional who meets the requirements of TEC, §29.0031(b), and §74.28 of this title, including any handbook adopted in the rule; and
 - (iv) when a student is identified with dyslexia and/or dysgraphia, the terms dyslexia and/or dysgraphia, as appropriate, must be used in a student's evaluation report. See §89.1055 of this title (relating to Individualized Education Program) for documenting in the individualized education program. For formal eligibility purposes under special education, the category of specific learning disability will be reported by a school district.
- (10) Speech impairment. A student with a speech impairment is one who has been determined to meet the criteria for speech or language impairment as stated in 34 CFR, §300.8(c)(11). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a speech impairment must include a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech/language pathologist.
- (11) Traumatic brain injury. A student with a traumatic brain injury is one who has been determined to meet the criteria for traumatic brain injury as stated in 34 CFR, §300.8(c)(12). A student's eligibility based on a traumatic brain injury must include a medical diagnosis provided by a licensed physician.
- (12) Visual impairment.
- (A) A student with a visual impairment is one who has been determined to meet the criteria for visual impairment as stated in 34 CFR, §300.8(c)(13). Information from a variety of sources must be considered by the multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on visual impairment in order to determine the need for specially designed instruction as stated in 34 CFR, §300.39(b)(3), and must include:
- (i) a medical report by a licensed ophthalmologist or optometrist that indicates the visual loss stated in exact measures of visual field and corrected visual acuity, at a distance and at near range, in each eye. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. The report should also include a diagnosis and prognosis whenever possible and whether the student has:
 - (I) no vision or visual loss after correction; or
 - (II) a progressive medical condition that will result in no vision or a visual loss after correction;

- (ii) a functional vision evaluation by a certified teacher of students with visual impairments or a certified orientation and mobility specialist. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision and recommendations concerning the need for a clinical low vision evaluation;
 - (iii) a learning media assessment by a certified teacher of students with visual impairments. The learning media assessment must include recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the student and whether or not there is a need for ongoing evaluation in this area; and
 - (iv) as part of the full individual and initial evaluation, an orientation and mobility evaluation conducted by a person who is appropriately certified as an orientation and mobility specialist. The orientation and mobility evaluation must be conducted in a variety of lighting conditions and in a variety of settings, including in the student's home, school, and community, and in settings unfamiliar to the student.
- (B) A person who is appropriately certified as an orientation and mobility specialist must participate in an initial eligibility determination and any reevaluation as part of the multidisciplinary team, in accordance with 34 CFR, §§300.122 and 300.303-300.311, in evaluating data used to make the determination of the student's need for specially designed instruction.
- (C) A child under three years of age meets the criteria for visual impairment if the child's record indicates that the child is experiencing a developmental delay because of vision loss or impairment, or the child has a physical or mental condition that has a high probability of resulting in a developmental delay and a sensory impairment, in accordance with 34 CFR, §303.21.
- (13) **Developmental delay.** A student with developmental delay is one who is between the ages of three through nine [~~3-9~~] who is evaluated by a multidisciplinary team for at least one disability category listed in paragraphs (1)-(12) of this subsection and whose evaluation data indicates a need for special education and related services and shows evidence of, but does not clearly confirm, the presence of the suspected disability or disabilities due to the child's young age. In these cases, an ARD committee may determine that data supports identification of developmental delay in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development. To use this eligibility category, multiple sources of data must converge to indicate the student has a developmental delay as described by one of the following:
- (A) performance on appropriate norm-referenced measures, including developmental measures, indicate that the student is at least 2 standard deviations below the mean or at the 2nd percentile of performance, when taking into account the standard error of measurement (SEM), in one area of development as listed in this paragraph, along with additional convergent evidence such as interviews and observation data that supports the delay in that area;
 - (B) performance on appropriate norm-referenced measures, including developmental measures, indicate that the student is at least 1.5 standard deviations below the mean or at the 7th percentile of performance, when taking into account the SEM, in at least two areas of development as listed in this paragraph, along with additional convergent evidence such as interviews and observation data that supports the delays in those areas; or
 - (C) a body of evidence from multiple direct and indirect sources, such as play-based assessments, information from the student's parent, interviews, observations, work samples, checklists, and other informal and formal measures of development, that clearly document a history and pattern of atypical development that is significantly impeding the

student's performance and progress across settings when compared to age-appropriate expectations and developmental milestones in one or more areas of development as listed in this paragraph.

- (14) Noncategorical. A student between the ages of three through five [~~3-5~~] who is evaluated as having an intellectual disability, an emotional disability, a specific learning disability, or autism may be described as noncategorical early childhood.
- (d) Developmental delay eligibility guidelines. Developmental delay, as described in subsection (c)(13) of this section, and noncategorical, as described in subsection (c)(14) of this section, may be used within the following guidelines.
 - (1) No school district will be required to use the eligibility category of developmental delay; however, if a district chooses to use this eligibility category, it must use the definition and criteria described in subsection (c)(13) of this section.
 - (2) If a school district chooses to use the eligibility category described in subsection (c)(13) of this section, it may do so beginning with the 2024-2025 school year.
 - (3) The eligibility category of noncategorical, as described in subsection (c)(14) of this section, must no longer be used by any school district beginning with the 2025-2026 school year. Any eligible student who begins the 2025-2026 school year already identified under subsection (c)(14) of this section may maintain this eligibility category, if determined appropriate by the student's ARD committee, until the required re-evaluation before the age of six.

§89.1075. General Program Requirements and Local District Procedures.

- (a) Each school district must maintain an eligibility folder for each student receiving special education and related services, in addition to the student's cumulative record. The eligibility folder must include, but will not be limited to, copies of referral data; documentation of notices and consents; evaluation reports and supporting data; admission, review, and dismissal (ARD) committee reports; and the student's individualized education programs (IEPs) and supporting data.
- (b) Each school district must develop policies, procedures, programs, and practices that are consistent with the state's established policies, procedures, programs, and services to implement the Individuals with Disabilities Education Act.
- (c) For school districts providing special education services to students with visual impairments, students who are deaf or hard of hearing, or students who are deafblind, there must be written procedures as required in Texas Education Code (TEC), §30.002(c)(9) [~~§30.002(c)(10)~~].
- (d) Each school district must ensure that each teacher who provides instruction to a student with disabilities:
 - (1) has access to relevant sections of the student's current IEP;
 - (2) is informed of the teacher's specific responsibilities related to implementation of the IEP, such as goals and objectives, and of needed accommodations, modifications, and supports for the student; and
 - (3) has an opportunity to request assistance regarding implementation of the student's IEP.
- (e) Each school district must develop a process to be used by a teacher who instructs a student with a disability in a general education classroom setting:
 - (1) to request a review of the student's IEP;
 - (2) to provide input in the development of the student's IEP;
 - (3) that provides for a timely district response to the teacher's request; and
 - (4) that provides for notification to the student's parent or legal guardian of that response.

- (f) Students with disabilities must have available an instructional day commensurate with that of students without disabilities. The ARD committee must determine the appropriate instructional setting and length of day for each student, and these must be specified in the student's IEP.
- (g) School districts that contract for services for ~~for [from nonpublic]~~ day ~~[schools]~~ or residential program placements must do so in accordance with 34 Code of Federal Regulations (CFR), §300.147, and §89.1092 and §89.1094 of this title (relating to ~~[Contracting for Nonpublic]~~ Residential Placement Programs ~~[Placements]~~ for the Provision of a Free Appropriate Public Education (FAPE) and ~~[Contracting for Nonpublic or Non-District Operated]~~ Day Placement Programs ~~[Placements]~~ for the Provision of a Free Appropriate Public Education (FAPE)).
- (h) Whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education to the student, the school district must provide prior written notice as required in 34 CFR, §300.503, including providing the notice in the parent's native language or other mode of communication. This notice must be provided to the parent at least 10 calendar ~~[five school]~~ days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.
- (i) The transition and employment designee required of each school district or shared services arrangement by TEC, §29.011, must complete the required training as developed by the commissioner of education within 90 calendar days of being initially designated and each time the training is updated by the commissioner. The designee must [and] provide information about transition requirements and coordination among parents, students, and appropriate state agencies to ensure that school staff can communicate and collaborate effectively.

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STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for a full individual and initial evaluation; TEC, §29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes contracts for services to students with disabilities in a residential or day placement program; TEC, §29.011, which establishes transition planning; TEC, §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the commissioner as necessary to implement TEC, Chapter 29, Subchapter A; TEC, §48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025, which establishes the funding framework for students receiving special education services under the Foundation School Program; TEC, §48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education service groups used in determining funding under the Foundation School Program; TEC, §48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education transition year funding; TEC, §48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes day placement program or cooperative funding; 34 CFR, §300.101, which establishes the requirement that free appropriate public education (FAPE) be available to all eligible children with disabilities; 34 CFR, §§300.114-300.118, which establish least restrictive environment requirements, including placement decisions and the provision of services in settings with nondisabled peers to the maximum extent appropriate; 34 CFR, §300.115, which requires public agencies to ensure a continuum of alternative placements is available to meet the needs of children with disabilities; 34 CFR, §300.129, which addresses the responsibilities of public agencies for children placed in or referred to private schools or facilities; 34 CFR, §300.147, which establishes state educational agency responsibilities for ensuring compliance and monitoring private school placements; 34 CFR, §§300.301-300.311, which establish requirements for evaluations, reevaluations, and eligibility determinations, including timelines and evaluation procedures; and 34 CFR, §300.503, which requires public agencies to provide parents prior written notice before proposing or refusing actions related to identification, evaluation, educational placement or the provision of FAPE.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§29.001, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.004; 29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.011; 29.026, as added by HB 2 and SB 568, 89th Texas Legislature, 2025; 48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025; 48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; and 34 Code of Federal Regulations (CFR), §§300.101, 300.114-300.118, 300.115, 300.129, 300.147, 300.301-300.311, and 300.503.

<rule>

§89.1092. Contracting for Nonpublic Residential Placements for the Provision of a Free Appropriate Public Education (FAPE).

§89.1094. Contracting for Nonpublic or Non-District Operated Day Placements for the Provision of a Free Appropriate Public Education (FAPE).

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STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for a full individual and initial evaluation; TEC, §29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes contracts for services to students with disabilities in a residential or day placement program; TEC, §29.011, which establishes transition planning; TEC, §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the commissioner as necessary to implement TEC, Chapter 29, Subchapter A; TEC, §48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025, which establishes the funding framework for students receiving special education services under the Foundation School Program; TEC, §48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education service groups used in determining funding under the Foundation School Program; TEC, §48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education transition year funding; TEC, §48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes day placement program or cooperative funding; 34 CFR, §300.101, which establishes the requirement that free appropriate public education (FAPE) be available to all eligible children with disabilities; 34 CFR, §§300.114-300.118, which establish least restrictive environment requirements, including placement decisions and the provision of services in settings with nondisabled peers to the maximum extent appropriate; 34 CFR, §300.115, which requires public agencies to ensure a continuum of alternative placements is available to meet the needs of children with disabilities; 34 CFR, §300.129, which addresses the responsibilities of public agencies for children placed in or referred to private schools or facilities; 34 CFR, §300.147, which establishes state educational agency responsibilities for ensuring compliance and monitoring private school placements; 34 CFR, §§300.301-300.311, which establish requirements for evaluations, reevaluations, and eligibility determinations, including timelines and evaluation procedures; and 34 CFR, §300.503, which requires public agencies to provide parents prior written notice before proposing or refusing actions related to identification, evaluation, educational placement or the provision of FAPE.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§29.001, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.004; 29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.011; 29.026, as added by HB 2 and SB 568, 89th Texas Legislature, 2025; 48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025; 48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; and 34 Code of Federal Regulations (CFR), §§300.101, 300.114-300.118, 300.115, 300.129, 300.147, 300.301-300.311, and 300.503.

<rule>

§89.1092. Residential Placement Programs for the Provision of a Free Appropriate Public Education (FAPE).

- (a) In accordance with Texas Education Code (TEC), §29.008, the commissioner of education shall maintain a list of approved residential placement programs that school districts may contract with for the provision of a free appropriate public education (FAPE) when a student's admission, review, and dismissal (ARD) committee determines the placement to be the least restrictive environment for the student. The school district that contracts with the residential program provider retains the obligation to ensure the student is provided with a FAPE in accordance with the student's individualized education program (IEP).
- (b) For purposes of TEC, §29.008, educational environments described by §89.1005 of this title (relating to Instructional Arrangements and Educational Environments), the Texas Student Data System Public Education Information Management System, and this section, residential placements shall be distinguished between ARD committee-placed and not ARD committee-placed.
- (c) Each school district, program, and provider must comply with all residential placement program requirements as part of the comprehensive system established and maintained under TEC, §29.001(c). The

Texas Education Agency (TEA) will share any changes in requirements with all current approved and prospective providers as well as impacted districts.

- (d) The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.
- (1) Provider--a public or private facility, institution, agency, or business as described in TEC, §29.008, with one or more residential placement program facilities that is approved to contract with a school district for the provision of special education and related services in a residential setting when the school district is unable to provide those services. A provider that contracts with a school district solely for the provision of related services is not subject to the requirements of this section.
 - (2) Residential placement-ARD committee-placed--a residential placement that includes the provision of special education and related services to one or more Texas public school students in a public or private residential program by a residential program provider, when the placement has been determined by the student's ARD committee to require a residential placement in order to facilitate the student's attainment of reasonable educational progress and to provide the student a FAPE. The placement is not intended for the provision of medical care or treatment.
 - (3) Residential placement-not ARD committee-placed--a residential placement that includes the provision of special education and related services to one or more Texas public school students in a residential facility as defined by TEC, §5.001(8), when the placement is not determined by the student's ARD committee.
 - (4) School district--includes independent school districts established under TEC, Chapter 11, Subchapters A-F, and open-enrollment charter schools established under TEC, Chapter 12, Subchapter D.
- (e) This section does not apply to residential placements that are not ARD committee-placed; placements in correctional facilities; court-ordered placements; ARD committee placements at Texas School for the Blind and Visually Impaired; ARD committee placements or parent placements at the Texas School for the Deaf; or placements in a state supported living center.
- (f) TEA shall periodically solicit applications from residential placement program providers that seek to contract with school districts for the provision of services and shall accept applications from program providers on an ongoing basis. A current contract for student placement with a school district is not required in order to be considered for approval.
- (g) All contracts for residential placements under this section must be approved by TEA. A school district must utilize TEA's list of approved residential placement program providers when considering residential placement for a student. If the school district wishes to contract with a provider not on the list, the provider must submit an application to TEA.
- (h) An approved residential placement program provider that operates more than one residential placement program facility must obtain approval for each facility if the provider plans to contract with school districts for services at those facilities.
- (i) A residential placement program provider must meet minimum standards established by TEA to be approved and to remain in approved status. The minimum standards will address, but not be limited to, the following:
- (1) requirements regarding appropriate certification or licensure for those who will work with students placed in the program;
 - (2) academic and behavioral curriculum content requirements and expectations;
 - (3) criminal background check requirements that must be at least equivalent to those required of public school employees;
 - (4) health and safety standards and any local or state accreditation and permit requirements;
 - (5) physical plant and equipment requirements;

- (6) written policies, procedures, and operating guidelines that must include necessary standards and steps to be followed to ensure each student maintains the same rights as other public school students with disabilities, including when a student is subject to emergency behavioral interventions or disciplinary actions, as well as to ensure the prohibition of aversive techniques as defined by TEC, §37.0023; and
- (7) fee schedules and guidelines for establishing fees for services.
- (j) Once initially approved, a residential placement program provider must go through a reapproval process at least once every five years unless TEA has withdrawn approval before the end of the approval period or the provider has withdrawn their provider status before the end of the approval period. A provider seeking reapproval shall submit interest in reapproval in accordance with timelines and materials published by TEA. If a previously approved provider wants to be considered for approval again after its approval has expired or has been withdrawn, the provider must reapply as if the provider was seeking initial approval. Additionally:

 - (1) TEA may impose conditions on a residential placement program provider as necessary to ensure the provision of a FAPE for students placed in the residential placement program during the provider's approval period or while the provider is undergoing reapproval; and
 - (2) if TEA denies approval, denies reapproval, or withdraws approval of a residential placement program provider, a school district must take steps to remove any student currently placed in the program, or cancel a planned placement, as expeditiously as possible.
- (k) TEA may conduct announced or unannounced onsite visits of a residential placement program that is serving one or more Texas public school students under this section and will monitor the program provider's compliance with the requirements of this section.
- (l) Before a student's ARD committee places a student in, or refers a student to, a residential placement program, the ARD committee shall convene a meeting to review and revise as necessary an IEP for the student in accordance with 34 Code of Federal Regulations, §§300.320-300.325, applicable state statutes, and commissioner rules in this chapter to ensure that all IEP statements, descriptions, and explanations reflect the student's current academic, functional, and developmental needs. The ARD committee must:

 - (1) determine whether the purpose of the placement or referral for placement is for educational purposes. An ARD committee is prohibited from placing a student in a residential placement program solely for treatment or medical issues or issues in the home, as the committee's main responsibility is to comply with the Individuals with Disabilities Education Act (IDEA) and applicable state law regarding special education; and
 - (2) determine whether the proposed residential placement program is the least restrictive environment that can provide FAPE to the student, unless in an emergency situation, as determined by the ARD committee and documented in the IEP.
- (m) The district shall initiate and conduct an in-person, onsite review of the approved program provider's facility and program to ensure that the program is appropriate for meeting the student's functional, developmental, and instructional needs before placement in the program.
- (n) The student's ARD committee may only recommend a residential placement program if the committee determines that the nature and severity of the student's disability and special education needs are such that the student cannot be satisfactorily educated in a less restrictive environment. Additionally, the following requirements apply.

 - (1) The student's IEP must list which individualized supports and services the school district is unable to provide and which services the residential placement program will provide.
 - (2) At the time the ARD committee determines placement, the ARD committee shall establish, in writing, criteria and a projected date for the student's return to a less restrictive environment and document this information in the IEP.

- (o) The appropriateness of the placement and the program shall be documented in the IEP at least annually. The student's progress towards reintegration, the appropriateness of the reintegration criteria, and the projected reintegration date shall be documented in the IEP at least annually.
- (p) The school district shall make a minimum of two onsite, in-person visits annually, one announced and one unannounced, and more often if directed by TEA, to:
- (1) review academic and behavioral data to verify that the program provider is implementing IEP services and any other contractual obligations, including meeting the TEA minimum standards; and
 - (2) verify that the educational program provided is appropriate for the student and the placement continues to be the least restrictive environment for the student.
- (q) The placement of more than one student in the same program may be considered in the same onsite visit to the facility. However, the IEP of each student must be individually reviewed and a determination must be made for each student regarding the appropriateness of placement and services to be provided.
- (r) Within 30 calendar days from an ARD committee's decision to place a student in an approved residential placement program, a school district must electronically submit to TEA notice of the placement and the fully executed contract in accordance with submission procedures specified by TEA.
- (1) The contract for an individual student recommended for or placed in an approved residential placement program shall be reviewed by TEA. Under no circumstances shall a contract violate the minimum standards or program's established guidelines that were included as part of the provider's approval process.
 - (2) TEA will give the parties an opportunity to amend a contract that does not comply with the minimum standards or contains language or terms that preclude agency approval of the contract.
 - (3) Contracts between school districts and approved residential placement program providers shall not begin prior to August 1 of the contracted program year and must not extend past July 31.
 - (4) Amendments to a contract must be electronically submitted to TEA in accordance with submission procedures specified by TEA no later than 30 calendar days from the change to the contract. TEA has authority to approve or deny these amendments. If denied, the parties will be given an opportunity to further amend the contract to address the issue or issues that precluded TEA approval.
- (s) The cost of residential placement programs will be funded according to TEC, §§29.008, 48.102, 48.1021, and 48.1022; §89.1005 of this title; §129.1025 of this title; and local and federal funds as necessary and appropriate.
- (1) For approved contracts effective through July 31, 2027, each approved contract for a residential placement program shall be funded as follows:
 - (A) through the assigned tier and service group(s) in accordance with TEC, §48.102 and §48.1021;
 - (B) through a school district's local tax share as described by TEC, §29.008(b);
 - (C) through a reservation by the school district of 25% of its IDEA-B formula-base planning amount (or the equivalent amount of state and/or local funds); and
 - (D) through a reimbursement process only to the extent that the funding described in subparagraphs (A)-(C) of this paragraph are insufficient to cover the full costs of a residential placement, if the school district applies and meets all requirements to receive such reimbursement through TEA's IDEA-B discretionary residential fund set-aside.
 - (2) Beginning with approved contracts as of August 1, 2027, each approved contract for a residential placement program shall be funded as follows:
 - (A) through the assigned tier and service group(s) in accordance with TEC, §48.102 and §48.1021; and

(B) through a combination of state, local, and federal funds.

- (t) School districts that contract for out-of-state residential programs shall do so in accordance with this section, except that the program provider must be approved by the appropriate agency in the state in which the facility is located rather than by TEA.
- (u) If a residential placement program is ordered by a special education hearing officer or court of competent jurisdiction, the school district shall notify TEA of the order within 30 calendar days. The program provider serving the student is not required to complete the approval procedures described in this section for the ordered placement. If, however, the school district or other school districts intend to place other public school students in the program, the program provider will be required to go through the approval procedures to be included on the commissioner's list of approved providers.
- (v) When a student who is placed by a school district in a residential placement program changes his or her residence to another Texas school district and the student continues in the contracted placement, the school district that negotiated the contract shall be responsible for the residential contract until July 31 or to the end of the contract period if earlier than July 31. This does not prohibit the new resident district from establishing its own contract with the approved provider and notifying the former district and TEA that the new district will take responsibility.
- (w) Approved providers with current contracts for student placements entered into prior to September 1, 2026, or the effective date of the most recent amendments to this section, whichever is later, shall have until January 1, 2027, to become compliant with all current TEA requirements for residential placement programs if they wish to remain on the approved list. TEA may grant exceptions to this deadline in extenuating circumstances.

§89.1094. Day Placement Programs for the Provision of a Free Appropriate Public Education (FAPE).

- (a) In accordance with Texas Education Code (TEC), §29.008, the commissioner of education shall maintain a list of approved day placement programs that school districts may contract with for the provision of a free appropriate public education (FAPE) when a student's admission, review, and dismissal (ARD) committee determines the placement to be the least restrictive environment for the student. The school district that contracts with the day placement program provider retains the obligation to ensure the student is provided with a FAPE in accordance with the student's individualized education program (IEP).
- (b) For purposes of TEC, §29.008 and §48.304, educational environments described by §89.1005 of this title (relating to Instructional Arrangements and Educational Environments), the Texas Student Data System Public Education Information Management System, and this section, day placement programs shall be distinguished between private and public day placement programs.
- (c) Each school district, program administrator, and provider must comply with all day placement program requirements as part of the comprehensive system established and maintained under TEC, §29.001(c). The Texas Education Agency (TEA) will share any changes in requirements with all current approved and prospective providers as well as impacted districts.
- (d) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
 - (1) Private day placement program--a private day placement program includes the provision of special education and related services to one or more Texas public school students for more than 50% of the student's instructional day in a classroom or facility operated by a private provider contracted by a school district. The classroom or facility may be privately or publicly owned and may be on a district campus or other district facility. When a private day placement program that is operating in or on a publicly owned classroom or facility such as a district campus or other district facility and the program is set up to accept students from other districts, a school district wishing to place a student in the operating school district's (program administrator's) program may contract directly with the operating school district (program administrator) since the private provider has already been approved by TEA.
 - (2) Private provider--a private facility, institution, entity, agency, or business inside or outside of Texas that is approved to contract with a school district for the provision of special education and

related services in a day placement program when the school district is unable to provide the services. A provider that a school district contracts with only for the provision of related services is not subject to the requirements of this section.

- (3) Program administrator--a public or private provider that administers a day placement program as part of a cooperative available for districts to contract with on an as-needed basis.
 - (4) Public day placement program-district operated--a public day placement program-district operated includes the provision of special education and related services to Texas public school students from more than one school district by personnel employed by the operating school district (program administrator) for more than 50% of the student's instructional day in a classroom or facility owned and operated by the operating school district (program administrator), but the classroom or facility is not housed on a regular campus. A school district program that provides special education and related services to one or more of its resident (enrolled) students by district personnel for more than 50% of the student's instructional day in a classroom or facility owned or operated by the school district, but the classroom or facility is not housed on a regular campus is not subject to the requirements of this rule regarding establishment and approval, but the district shall still report the establishment and operation of these programs in accordance with a schedule and method prescribed by TEA.
 - (5) Public day placement program-non-district operated--a public day placement program-non-district operated includes the provision of special education and related services to one or more Texas public school students for more than 50% of the student's instructional day by personnel employed with or contracted by an education service center (ESC) or the Harris County Department of Education (HCDE) in a classroom or facility owned or leased by the ESC, HCDE, or a district with which an ESC or HCDE is contracting to provide services.
 - (6) Public provider--a school district, an ESC, or HCDE approved to operate a public day placement program.
 - (7) Regular campus--a public school campus that is designed primarily to teach the general education curriculum to students with and without disabilities.
 - (8) School district--the definition of a school district includes independent school districts established under TEC, Chapter 11, Subchapters A-F, and open-enrollment charter schools established under TEC, Chapter 12, Subchapter D.
- (e) This section does not apply to placements in Head Start programs; at Texas School for the Blind and Visually Impaired; at Texas School for the Deaf; in transition-focused programs at district and community facilities for students who have met requirements for graduation and received a diploma but are continuing or have returned for the provision of services as authorized under §89.1070(b)(2) or (c)(1)-(3) of this title (relating to Graduation Requirements); in centralized locations for children receiving early childhood special education services; in a Regional Day School Program for the Deaf; or any program made for purposes other than ensuring the provision of a FAPE.
 - (f) To the extent that school districts are part of a shared services arrangement (SSA) for the provision of special education and related services and where those services are provided in a centralized location for only those districts that are members of the SSA, this section shall not apply. However, to the extent that an SSA allows students from districts that are not members of the SSA to be accepted into the SSA's centralized location's program, or when an SSA contracts with a private provider that would be subject to this rule, this section shall apply.
 - (g) TEA shall periodically solicit applications from public and private day placement program providers that wish to operate or provide day placement programs and services. TEA shall also accept applications from public and private providers on an ongoing basis. A current contract for student placement with a school district is not required in order to be considered for approval.
 - (h) All contracts for residential placements under this section must be approved by TEA. A school district must utilize TEA's list of approved day placement program providers when considering day placement for a student. If the school district wishes to contract with a provider not on the list, the provider must submit an application to TEA.

- (i) An approved private provider that wishes to replicate a current program with another school district must receive approval from TEA prior to establishing a new program.
- (j) A school district that operates as an approved program administrator shall notify TEA within 30 calendar days from an ARD committee's decision to place its own enrolled student in its approved program.
- (k) A public or private day placement program provider must meet minimum standards established by TEA to be approved and to remain in approved status. The minimum standards will address, but not be limited to, the following:

 - (1) requirements regarding appropriate certification or licensure for those who will work with students placed in the program;
 - (2) academic and behavioral curriculum content requirements and expectations;
 - (3) criminal background check requirements that must be at least equivalent to those required of public school employees;
 - (4) health and safety standards and any local or state accreditation and permit requirements;
 - (5) physical plant and equipment requirements;
 - (6) written policies, procedures, and operating guidelines that must include necessary standards and steps to be followed to ensure each student maintains the same rights as other public school students with disabilities, including when a student is subject to emergency behavioral interventions or disciplinary actions, as well as to ensure the prohibition of aversive techniques as defined by TEC, §37.0023; and
 - (7) fee schedules and guidelines for establishing fees for services.
- (l) Once initially approved, a day placement program provider must go through a reapproval process at least once every five years unless TEA has withdrawn approval before the end of the approval period or the provider has withdrawn their provider status before the end of the approval period. A provider seeking reapproval shall submit interest in reapproval in accordance with timelines and materials published by TEA. If a previously approved provider wants to be considered for approval again after its approval period has expired or has been withdrawn, the provider must reapply as if the provider was seeking initial approval. Additionally, the following provisions apply.

 - (1) TEA may place conditions on the day placement program provider to ensure the provision of a FAPE for students who have been placed in the day placement program during the provider's approval period or during a reapproval process.
 - (2) If TEA does not approve, does not reapprove, or withdraws an approval from a day placement program provider, a school district must take steps to remove any students currently placed in the program, or cancel a student's planned placement, as expeditiously as possible adhering to TEA established timelines.
- (m) TEA may conduct announced or unannounced onsite visits at a day placement program that is serving one or more Texas public school students in accordance with this section and will monitor the program provider's compliance with the requirements of this section.
- (n) Before a student's ARD committee places a student in, or refers a student to, a day placement program, the ARD committee shall convene an ARD committee meeting to review and revise as necessary an IEP for the student in accordance with 34 Code of Federal Regulations (CFR), §§300.320-300.325, applicable state statutes, and commissioner rules in this chapter to ensure that all IEP statements, descriptions, and explanations reflect the student's current academic, functional, and developmental needs.
- (o) The district shall initiate and conduct an onsite, in-person review of the program to ensure that the program is appropriate for meeting the student's functional, developmental, and academic needs before placement in the program.
- (p) The student's ARD committee may only recommend a day placement program if the committee determines that the nature and severity of the student's disability and special education needs are such that the student

cannot be satisfactorily educated on a regular campus in the school district. Additionally, the following requirements apply.

- (1) The student's IEP must list which individualized supports and services a regular campus in the school district is unable to provide and which services the program will provide.
 - (2) At the time the ARD committee determines placement, the ARD committee shall establish, in writing, criteria and a projected date for the student's return to a regular campus in the school district and document this information in the IEP.
- (q) The appropriateness of the placement and the program must be documented in the student's IEP at least annually. The student's progress toward reintegration, the appropriateness of the reintegration criteria, and the projected reintegration date shall be documented in the IEP at least annually.
- (r) A school district that contracts for a public or private day placement program shall make a minimum of two onsite, in-person visits annually, one announced and one unannounced, and more often if directed by TEA, to:
- (1) review academic and behavioral data to verify that the program provider is implementing IEP services and any other contractual obligations, including meeting the TEA minimum standards; and
 - (2) verify that the day placement program continues to be the least restrictive environment for the student.
- (s) The placement of more than one student in the same program may be considered in the same onsite visit. However, the IEP of each student must be individually reviewed and a determination must be made for each student regarding the appropriateness of placement and services to be provided.
- (t) Within 30 calendar days from an ARD committee's decision to place a student in an approved day placement program, the placing school district must electronically submit to the TEA notice of the placement and the fully executed contract in accordance with submission procedures specified by TEA.
- (1) The contract for an individual student recommended for or placed in an approved day placement program shall be reviewed by TEA. Under no circumstances shall a contract violate the minimum standards or program's established guidelines that were included as part of the provider's approval process.
 - (2) TEA will give the parties an opportunity to amend a contract that does not comply with the minimum standards or contains language or terms that preclude agency approval of the contract.
 - (3) Contracts between school districts and approved day placement program providers shall not begin prior to August 1 of the contracted program year and must not extend past July 31.
 - (4) Amendments to a contract must be electronically submitted to TEA in accordance with submission procedures specified by TEA no later than 30 calendar days from the change to the contract. TEA has authority to approve or deny these amendments. If denied, the parties will be given an opportunity to further amend the contract to address the issue or issues that precluded TEA approval.
- (u) If a student who is placed in an approved day placement changes his or her residence to another Texas school district during the school year, the school district must notify TEA within 10 calendar days of the date on which the school district ceased contracting with the program provider for the student's placement or withdrew the student from the program. The student's new school district must meet the requirements of 34 CFR, §300.323(e), by providing comparable services to those described in the student's IEP from the previous school district until the new school district either adopts the student's IEP from the previous school district or develops, adopts, and implements a new IEP. The new school district must comply with all procedures described in this section for continued or new program placement.
- (v) If a day placement program is ordered by a special education hearing officer or court of competent jurisdiction, the school district must notify TEA of the order within 30 calendar days. The program provider serving the student is not required to go through the approval procedures described in this section for the ordered placement. If, however, the school district or other school districts intend to place other

students in that same program, the program provider will be required to go through the approval procedures to be included on the commissioner's list of approved providers.

- (w) The cost of day placement programs will be funded according to TEC, §§48.102, 48.1021, and 48.1022; §89.1005 of this title; §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook); and local and federal funds as necessary and appropriate.
- (x) Approved providers with current contracts for student placements entered into prior to September 1, 2026, or the effective date of the most recent amendments to this section, whichever is later, shall have until January 1, 2027, to become compliant with all current TEA requirements for day placement programs if they wish to remain on the approved list. TEA may grant exceptions to this deadline in extenuating circumstances.
- (y) To qualify for the allotment authorized by TEC, §48.304, a program must also meet the requirements of this section and any other TEA-established criteria for the award of those funds.

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STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for a full individual and initial evaluation; TEC, §29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes contracts for services to students with disabilities in a residential or day placement program; TEC, §29.011, which establishes transition planning; TEC, §29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes rulemaking authority for the commissioner as necessary to implement TEC, Chapter 29, Subchapter A; TEC, §48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025, which establishes the funding framework for students receiving special education services under the Foundation School Program; TEC, §48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education service groups used in determining funding under the Foundation School Program; TEC, §48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes special education transition year funding; TEC, §48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes day placement program or cooperative funding; 34 CFR, §300.101, which establishes the requirement that free appropriate public education (FAPE) be available to all eligible children with disabilities; 34 CFR, §§300.114-300.118, which establish least restrictive environment requirements, including placement decisions and the provision of services in settings with nondisabled peers to the maximum extent appropriate; 34 CFR, §300.115, which requires public agencies to ensure a continuum of alternative placements is available to meet the needs of children with disabilities; 34 CFR, §300.129, which addresses the responsibilities of public agencies for children placed in or referred to private schools or facilities; 34 CFR, §300.147, which establishes state educational agency responsibilities for ensuring compliance and monitoring private school placements; 34 CFR, §§300.301-300.311, which establish requirements for evaluations, reevaluations, and eligibility determinations, including timelines and evaluation procedures; and 34 CFR, §300.503, which requires public agencies to provide parents prior written notice before proposing or refusing actions related to identification, evaluation, educational placement or the provision of FAPE.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§29.001, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.004; 29.008, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.011; 29.026, as added by HB 2 and SB 568, 89th Texas Legislature, 2025; 48.102, as amended by HB 2, 89th Texas Legislature, Regular Session, 2025; 48.1021, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.1022, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 48.304, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; and 34 Code of Federal Regulations (CFR), §§300.101, 300.114-300.118, 300.115, 300.129, 300.147, 300.301-300.311, and 300.503.

<rule>

§89.1121. Distribution of State Funds.

- (a) Procedures for counting the average daily attendance (ADA) of students receiving special education and related services [in various instructional settings] must be developed by the commissioner of education and included in the student attendance accounting handbook adopted under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook).
- (b) State special education funding shall be based on the assigned tier as described by Texas Education Code (TEC), §48.102, and any service groups reported under TEC, §48.1021, [funds must be distributed to school districts on the basis of ADA of full time equivalents of eligible students served] in accordance with this section and the student attendance accounting handbook adopted under §129.1025 of this title [§129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes)] .
- (c) Funding for the 2026-2027 school year shall be determined in accordance with TEC, §48.1022.
- ~~(e) — The special education attendance must be converted to contact hours by instructional arrangement and then to full time equivalents. The full time equivalent for each instructional arrangement is multiplied by the~~

~~annual amount equal to the basic allotment or, if applicable, the sum of the basic allotment and the allotment under Texas Education Code (TEC), §48.101, and then multiplied by the weight for the instructional arrangement as prescribed in TEC, §48.102(a). Contact hours for any one student receiving special education services may not exceed six hours per day or 30 hours per week for funding purposes. The total contact hours generated per week is divided by 30 to determine the full-time equivalents. Special education full-time equivalents generated are deducted from the school district's ADA for purposes of the regular education allotment.]~~

- (d) The receipt of special education funds is contingent upon the operation of an approved comprehensive special education program in accordance with state and federal laws and regulations. ~~[No district may divert special education funds for other purposes, with the exception of administrative costs as defined in Chapter 105, Subchapter B, of this title (relating to Use of State Funds).]~~ Funds generated by TEC, §48.102 and §48.1021, ~~[full-time equivalents in one instructional arrangement]~~ may be spent on the overall special education program and are not limited to the student who ~~[instructional arrangement which]~~ generated the funds. The district must maintain separate accountability for the total state special education program fund within the general fund.
- (e) A special education fund balance may be carried over to the next fiscal year but must be expended on the special education program in the subsequent year. State special education carryover funds cannot be used for administrative costs.

~~[(f) Students who are at least three, but younger than 22, years of age on September 1 of the current scholastic year who participate in the regional day school program for the deaf may be counted as part of the district's ADA if they receive instruction from the basic program for at least 50% of the school day.]~~

~~[(f) ~~(g)~~ Students from birth through age two with a visual impairment, who are deaf or hard of hearing, or who are deafblind ~~[both]~~ who are provided services by the district according to an individualized ~~[individual]~~ family services plan ~~[(IFSP)]~~ must be enrolled on the district home or regional day school program for the deaf campus and must be considered eligible for ADA in accordance with this section and the student attendance accounting handbook adopted under §129.1025 of this title ~~[on the same basis as other students receiving special education services]~~ .~~

~~[(h) Funding for the mainstream special education instructional arrangement must be based on the average daily attendance of the students in the arrangement multiplied by the annual amount equal to the basic allotment or, if applicable, the sum of the basic allotment and the allotment under TEC, §48.101, and the 1.15 weight as provided by TEC, §48.102(a). The attendance must not be converted to contact hours/full-time equivalents as with the other instructional arrangements.]~~

~~(g) A student shall be reported for the highest tier for which they meet criteria according to services and supports documented in their individualized education program (IEP) and as determined by their admission, review, and dismissal (ARD) committee. The tiers prescribed by TEC, §48.102, shall consist of and be driven by the following.~~

~~(1) The five domains to be considered are:~~

~~(A) curriculum and instruction supports;~~

~~(B) communication supports;~~

~~(C) behavioral supports;~~

~~(D) independent functioning supports; and~~

~~(E) personal care/health supports.~~

~~(2) Each domain shall be scored and then added together to determine the composite score.~~

~~(3) The Texas Education Agency (TEA) will develop domain criteria and point bands aligned to those criteria, and the tiers shall be aligned with the following descriptions.~~

~~(A) Tier 1--students who receive speech therapy as their only instructional service or receive minimal special education services.~~

~~(B) Tier 2--low intensity academic or communication supports.~~

- (C) Tier 3--moderate, targeted special education services.
 - (D) Tier 4--sustained, multi-domain support.
 - (E) Tier 5--high intensity instructional and/or behavioral support.
 - (F) Tier 6--very high intensity, complex needs.
 - (G) Tier 7--pervasive, school-day-dominant support.
 - (H) Tier 8--residential placement (See §89.1092 of this title (relating to Residential Placement Programs for the Provision of a Free Appropriate Public Education (FAPE))).
- (h) Pervasive, school-day-dominant support as described by subsection (g)(3)(G) of this section shall include, but may not be limited to, special education and related services provided in a public or private day placement program (See §89.1094 of this title (relating to Day Placement Programs for the Provision of a Free Appropriate Public Education (FAPE))).
- (i) A student shall be reported for each service group level for which the student meets criteria according to services and supports documented in the IEP and as determined by their ARD committee. The service groups shall be categorized as follows.
- (1) Service Group 1--related services provided at least 180 minutes and less than 270 minutes per six-week period; student receives special transportation as a related service; and/or student receives parent counseling and training as a related service.
 - (2) Service Group 2--related services provided at least 270 minutes and less than 540 minutes per six-week period.
 - (3) Service Group 3--related services provided at least 540 minutes per six-week period.
 - (4) Service Group 4--1:1 provider-to-student ratio needed between 50% and 80% of the student's instructional day.
 - (5) Service Group 5--1:1 provider-to-student ratio needed over 80% of the student's instructional day.
- (j) TEA shall develop guidance documents and materials for school systems to use in determining the tier and service groups for a student as described by subsections (g)-(j) of this section.

§89.1125. Allowable Expenditures of State Special Education Funds.

- (a) Persons paid from state special education funds shall be assigned to instructional or other duties in the special education program and/or to provide support services to the general ~~[regular]~~ education program in order for students with disabilities to be included in the general education ~~[regular]~~ program. Support services shall include, but not be limited to, collaborative planning, co-teaching, small group instruction with students with and without disabilities ~~[special and regular education students]~~, direct instruction to ~~[special education]~~ students receiving special education and related services, or other support services determined necessary by the admission, review, and dismissal ~~[(ARD)]~~ committee for an appropriate program for the student with disabilities. Assignments may include duties supportive to school operations equivalent to those assigned to general ~~[regular]~~ education personnel.
- (b) Personnel assigned to provide support services to the general ~~[regular]~~ education program as stated in subsection (a) of this section may be fully funded from state special education funds.
- (c) If personnel are assigned to special education on less than a full-time basis, except as stated in subsection (a) of this section, only that portion of time for which the personnel are assigned to students with disabilities shall be paid from state special education funds.
- (d) State special education funds may be used for special materials, supplies, and equipment that ~~[which]~~ are directly related to the development and implementation of individualized education programs ~~[(IEPs)]~~ of students and which are not ordinarily purchased for the general education ~~[regular]~~ classroom. Office and routine classroom supplies are not allowable. Special equipment may include instructional and assistive technology devices, audiovisual equipment, computers for instruction or assessment purposes, and assessment equipment only if used directly with students.

- (e) State special education funds may be used to contract with consultants or licensed, certified, or otherwise credentialed professionals to provide staff development, program planning and evaluation, instructional services, support services, assessments, and related services to students with disabilities.
- ~~[(f) State special education funds may be used for transportation only to and from residential placements. Prior to using federal funds for transportation costs to and from a residential facility, a district must use state or local funds based on actual expenses up to the state transportation maximum for private transportation contracts.]~~
- (f) ~~(e)~~ State special education funds may be used to pay staff travel to perform services directly related to the education of eligible students with disabilities. Funds may also be used to pay travel of staff, ~~[(f)~~ including administrators, general education teachers, and special education teachers and service providers, ~~]~~ to attend staff development meetings for the purpose of improving performance in assigned positions directly related to the education of eligible students with disabilities. In no event shall the purpose for attending such staff development meetings include time spent in performing functions relating to the operation of professional organizations. Funds may also be used to pay for the joint training of parents and special education, related services, and general education personnel.