

The following is draft language that TEA plans to propose to amend to 19 Texas Administrative Code (TAC) §89.1121 to implement Texas Education Code (TEC) §48.102, §48.1021, and §48.1022, as amended/added by House Bill (HB) 2/Senate Bill (SB) 568, 89th Regular Session, effective 9/1/2026. This language is subject to change both before the proposed amendments are filed with the Texas Register and again at final adoption.

Title 19, Chapter 89, Subchapter AA

Division 4. Special Education Funding

§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[s] shall ~~must~~ be based on the assigned tier as described by Texas Education Code (TEC), §48.102, and any service groups reported under TEC, §48.1021, [~~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 under §129.1025[~~1~~] of this title (relating to Adoption by Reference: [~~Requirements for~~] Student Attendance Accounting Handbook [~~for State Funding Purposes~~]).
- (c) Funding for the 2026-2027 school year shall be determined in accordance with TEC §48.1022. [~~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 [both] who are deafblind who are provided services by the district according to an individualized 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 [en] the student attendance accounting handbook adopted under §129.1025 of this title [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) -(i) of this section.