

The State Board of Education (SBOE) adopts amendments to §§89.1, 89.2, and 89.5 and new §89.4, concerning gifted/talented education. Sections 89.1, 89.2, and 89.4 are adopted without changes to the proposed text as published in the May 17, 2024 issue of the *Texas Register* (49 TexReg 3470) and will not be republished. Section 89.5 is adopted with changes to the proposed text as published in the May 17, 2024 issue of the *Texas Register* (49 TexReg 3470) and will be republished. The adopted revisions implement House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, and codify current program practices.

REASONED JUSTIFICATION: Chapter 89, Subchapter A, provides rules for gifted and talented education. HB 1525, 87th Texas Legislature, Regular Session, 2021, provided for a gifted and talented student allotment and established criteria for using the funds. The revisions to Chapter 89, Subchapter A, implement HB 1525 and codify current program practices. Specifically, the following changes have been made.

Section 89.1 was amended to add new paragraph (6) to establish that school district policies related to gifted and talented education may not limit the number of students who may be identified as gifted and talented. In addition, the section title was modified to clarify that the section addresses the identification of gifted and talented students.

Section 89.2 was amended to clarify terms regarding professional learning for staff and establish criteria for completion. The section title was also updated to reflect the contents of the rule.

New §89.4 aligns with HB 1525, 87th Texas Legislature, Regular Session, 2021, by establishing fiscal responsibilities for school districts regarding the use of gifted and talented services for identified students.

Section 89.5 was amended to establish additional criteria for program accountability in new paragraphs (2) and (3). New paragraph (2) requires school districts to annually certify to the commissioner that the district's services for gifted and talented students have been established in accordance with the Texas State Plan for the Education of the Gifted/Talented (State Plan) and that the use of funds complies with new §89.4. A new paragraph (3) includes the addition of a performance measure by the board of trustees in alignment with the State Plan. In response to public comment, a grammatical edit was made at adoption to change the word "comply" to "complies" in paragraph (2).

The SBOE approved the revisions for first reading and filing authorization at its April 12, 2024 meeting and for second reading and final adoption at its June 28, 2024 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the revisions for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2025-2026 school year. The earlier effective date will allow districts of innovation and open-enrollment charter schools that begin school prior to the statutorily required start date to implement the rules when they begin their school year. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 17, 2024, and ended at 5:00 p.m. on June 17, 2024. The SBOE also provided an opportunity for registered oral and written comments at its June 2024 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment: Four individuals commented in support of the proposed revisions.

Response: The SBOE agrees.

Comment: A retired gifted and talented specialist requested a revision from "comply" to "complies" in §89.5(2).

Response: The SBOE agrees and has modified §89.5(2) at adoption to use the word "complies."

Comment: One individual requested that the rules include accountability measures to ensure gifted and talented students are being served by teachers who have completed the required 30 hours of training.

Response: The SBOE disagrees. The SBOE does not have authority to monitor teacher training and students served; such authority would require legislation. The local district is responsible for monitoring and is accountable for ensuring that students are properly served.

Comment: One individual requested that gifted/talented programs in Texas be fully funded.

Response: This comment is outside the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The amendments and new section are adopted under Texas Education Code (TEC), §29.121, which establishes the definition of a gifted and talented student; TEC, §29.122, which establishes that each school district shall adopt a process for identifying and serving gifted and talented students; TEC, §29.123, which establishes that the State Board of Education shall develop and update a state plan for the education of gifted and talented students to guide school districts; §39.236, which establishes criteria for the commissioner to adopt standards to evaluate school district programs for gifted and talented students; and TEC, §48.109, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021, which establishes criteria for utilizing the gifted and talented student allotment funds.

CROSS REFERENCE TO STATUTE. The amendments and new section implement Texas Education Code, §§29.121; 29.122; 29.123; 39.236; and 48.109, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021.

<rule>

§89.1. Student Identification.

School districts shall develop written policies on student identification that are approved by the local board of trustees and disseminated to parents. The policies must:

- (1) include provisions for ongoing screening and selection of students who perform or show potential for performing at remarkably high levels of accomplishment in the areas defined in the Texas Education Code, §29.121;
- (2) include assessment measures collected from multiple sources according to each area defined in the Texas State Plan for the Education of Gifted/Talented Students;
- (3) include data and procedures designed to ensure that students from all populations in the district have access to assessment and, if identified, services for the gifted/talented program;
- (4) provide for final selection of students to be made by a committee of at least three local district educators who have received training in the nature and needs of gifted students;
- (5) include provisions regarding furloughs, reassessment, exiting of students from program services, transfer students, and appeals of district decisions regarding program placement; and
- (6) not limit the number of students the district may identify as gifted/talented or served under the district's program for gifted/talented students.

§89.2. Professional Learning.

School districts shall ensure that:

- (1) prior to assignment in the program or within one semester of assignment, teachers who provide instruction and services that are a part of the program for gifted/talented students have a minimum of 30 hours of professional learning that includes nature and needs of gifted/talented students, assessing student needs, and curriculum and instruction for gifted/talented students;
- (2) teachers who provide instruction and services that are a part of the program for gifted/talented students receive a minimum of six hours annually of professional learning in gifted/talented education; and

- (3) administrators and counselors who have authority for program decisions have a minimum of six hours of professional learning that includes nature and needs of gifted/talented students and program options with an update after legislative sessions.

§89.4. Fiscal Responsibility.

School districts shall adopt a policy regarding the use of funds to support the district's program for gifted and talented students, as required by Texas Education Code, §29.022(b). The policy must:

- (1) ensure that 100% of state funds allocated for gifted/talented education are spent on providing gifted/talented services or enhancing the district's gifted and talented program; and
- (2) establish a method to account for the expenditure of the gifted and talented allotment in alignment with the Texas Education Agency's financial compliance guidance.

§89.5. Program Accountability.

A school district shall ensure that:

- (1) student assessment and services for gifted/talented students comply with accountability standards defined in the Texas State Plan for the Education of the Gifted/Talented (State Plan);
- (2) it annually certifies to the commissioner of education that the district's program for gifted/talented students is consistent with the State Plan and that the district's use of funds complies with §89.4 of this title (relating to Fiscal Responsibility); and
- (3) the board of trustees annually measures the performance of the district in providing gifted/talented services in alignment with the State Plan.