The Texas Education Agency (TEA) adopts 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 amendments to §§89.1005, 89.1121, and 89.1125 and the repeal of §89.1092 and §89.1094 are adopted without changes to the proposed text as published in the May 15, 2026 issue of the *Texas Register* (51 TexReg 3189) and will not be republished. The amendments to §89.1040 and §89.1075 and new §89.1092 and §89.1094 are adopted with changes to the proposed text as published in the May 15, 2026 issue of the *Texas Register* (51 TexReg 3189) and will be republished. The adopted revisions 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 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.

REASONED JUSTIFICATION: The adopted amendment to §89.1005 updates 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 adopted amendment updates terminology, clarifies transition-period reporting requirements, and specifies 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 adopted amendment to §89.1040 updates eligibility criteria for special education and related services to support consistent statewide implementation. To improve clarity, the adopted amendment addresses evaluation procedures and eligibility determinations, including requirements for full individual and initial evaluations and reevaluations. Based on public comment, the rule text was revised at adoption to clarify standards for intellectual disability evaluations, incorporate Early Childhood Intervention (ECI) evaluations as data for developmental delay eligibility determinations, require consideration of factors that may affect the validity of assessment instruments and evaluation results, and update references from "licensed specialist in school psychology" to "school psychologist" to align with statutory changes. Together, the adopted changes strengthen consistent and accurate identification of students eligible for special education and related services across the state.

The adopted amendment to §89.1075 addresses general program requirements and local district procedures to support consistent statewide implementation. The adopted amendment updates statutory cross references, clarifies documentation and contracting requirements, revises the timeline for providing prior written notice to parents, and specifies training requirements for district transition and employment designees. Based on public comment, subsection (h) was revised at adoption to maintain the original rule text requiring at least five school days' prior written notice until July 1, 2027, allowing school systems time to transition and implement the updated requirement, while clarifying language access requirements.

New §89.1075(i) was added at adoption to implement the transition to a ten-calendar-day prior written notice requirement, beginning July 1, 2027, and subsection (j) was revised to require annual completion of training by the transition and employment designee.

Section 89.1092 is repealed and adopted as a new rule. The new rule reorganizes and clarifies requirements applicable to residential placement programs used to provide free appropriate public education (FAPE) to students with disabilities. The new language also clarifies approval, reapproval, and monitoring requirements for providers; distinguishes between ARD committee-placed and non-ARD committee-placed residential placements; and updates requirements related to contracts, onsite monitoring, notice to TEA, and funding. Funding and reporting provisions are aligned with statutory changes enacted by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, while other revisions clarify existing oversight and procedural expectations specific to residential placements.

Section 89.1094 is repealed and adopted as a new rule. The new rule revises the structure and oversight of public and private day placement programs used to provide FAPE. The new language also clarifies distinctions between district-operated, non-district-operated, and private day placement programs; refines approval, reapproval, and monitoring requirements for program administrators and providers; and updates contracting, onsite reviews, notice, and funding eligibility provisions. The provisions align day placement program requirements with HB 2 and SB 568, 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. At adoption, subsection (h) was revised to add the term "day" for consistency with the section and to clarify that the requirements apply to day placement programs.

The adopted amendment to §89.1121 updates 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 568, 89th Texas Legislature, Regular Session, 2025. The amendment requires state special education funding to be based on assigned tiers and service groups under Texas Education Code (TEC), §48.102 and §48.1021; establishes transition-year funding for the 2026-2027 school year under TEC, §48.1022; and clarifies reporting through the Student Attendance Accounting Handbook adopted under 19 TAC §129.1025. These changes support consistent statewide implementation of the tier- and service group-based funding structure.

The adopted amendment to §89.1125 clarifies 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 adopted amendment specifies permissible uses of state special education funds and reinforces 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 adopted changes promote transparency, consistency, and compliance in the use of state special education funds.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 15, 2026, and ended June 15, 2026, and included public hearings on June 4 and 5, 2026. Following is a summary of public comments received and agency responses.

§89.1005, Instructional Arrangements and Educational Environments

Comment: The Texas Council of Administrators of Special Education (TCASE) commented in support of the proposed revisions, including the phased timeline and delayed data reporting, but raised concerns about significant implementation burdens, ongoing underfunding, and potential funding risks, requesting additional flexibility, extended hold harmless through the 2027-2028 school year, and continued guidance and support.

Response: The agency disagrees that revisions are necessary, as TEC, §48.1022, establishes the timeline for the implementation of the new funding model. The comments related to funding levels, extended hold harmless provisions, and additional flexibility are outside the scope of the proposed rulemaking.

Comment: An individual commented in support of the revisions, emphasizing the need for clear guidance, implementation tools, and stronger oversight focused on instructional quality, noting district challenges with staffing and resources.

Response: The agency agrees and will continue to provide guidance through technical assistance.

Comment: Disability Rights Texas (DRTx) recommended revising 19 TAC §89.1005(c)(1), to exclude time spent in disciplinary settings from general education placement calculations, citing concerns about service interruptions and inaccurate reporting of student access to inclusive educational settings.

Response: The agency disagrees. The rule defines a general education setting and if a disciplinary setting meets the definition, then it would be considered a general education setting under this rule.

§89.1040, Eligibility Criteria

Comment: The Texas Fetal Alcohol Spectrum Disorders Network and one individual recommended amending §89.1040 to explicitly include fetal alcohol spectrum disorders (FASD) under Other Health Impairment (OHI), citing inconsistent eligibility determinations, misclassification of students (including under autism), and the need for improved data accuracy, appropriate supports, and better student outcomes.

Response: The agency disagrees. Limiting FASD to OHI only may not be appropriate for educational purposes. Eligibility must remain individualized based on a student's specific needs; however, FASD may be considered under OHI in some cases.

Comment: DRTx recommended revising proposed intellectual disability eligibility criteria in §89.1040 to add safeguards to ensure eligibility determinations are based on multiple sources of individualized, evidence-based data and prohibit reliance on stereotypes or generalizations, citing concerns about misidentification.

Response: The agency agrees that eligibility determinations must be based on multiple sources of individualized data, consistent with Individuals with Disabilities Education Act (IDEA) requirements. The agency has revised the rule text in §89.1040(c)(5)(A)(ii) at adoption to clarify this standard.

Comment: DRTx recommended revising developmental delay provisions to clarify that multidisciplinary teams may consider ECI eligibility and evaluation data to support continuity of services when students transition to the public school system.

Response: The agency agrees and has revised the rule text in §89.1040(c)(13) at adoption to incorporate the use of ECI evaluations as part of the data considered for developmental delay.

Comment: The Austin/Travis County Success By 6 Coalition and Texans Care for Children commented in support of clearer developmental delay criteria but recommended stronger alignment between IDEA, Part C (ECI) and Part B, including aligning eligibility criteria, recognizing ECI evaluation data, reducing duplicative evaluations, and improving transition coordination to promote continuity of services and prevent service gaps for young children.

Response: The agency disagrees that a change is necessary at this time because the recommendation is outside the scope of this rulemaking. However, the agency will continue to collaborate with the Health and Human Services Commission, which administers IDEA, Part C, and other stakeholders to discuss the need for any future amendments that may be proposed on this topic.

Comment: The Texas Association of School Psychologists supported the proposed revisions but requested clarification of the developmental delay age range, additional safeguards to prevent misidentification of emergent bilingual students under intellectual disability criteria, and updates to reflect the statutory title change from "licensed specialist in school psychology" to "school psychologist."

Response: The agency agrees in part and disagrees in part. The agency has revised the rule text at adoption to reflect the statutory change in title from "licensed specialist in school psychology" to "school psychologist." The agency disagrees that revisions are necessary regarding the age range for developmental delay, as the proposed rule is consistent with applicable state and federal requirements. The agency will provide clarification through technical assistance regarding the identification of emergent bilingual students to support appropriate evaluation and eligibility determinations.

Comment: An individual raised concerns about the proposed intellectual disability and visual impairment eligibility criteria, citing risks of misidentification for students with sensory, communication, motor, neurological, and developmental disabilities and recommended stronger requirements to consider access needs, multidisciplinary evaluation, and reduced reliance on medical diagnosis for visual impairment eligibility.

Response: The agency disagrees that additional amendments are necessary at this time. However, the agency intends to seek additional stakeholder feedback regarding the eligibility criteria, and will consider protentional future revisions to the rule text based on that feedback.

§89.1075, General Program Requirements and Local District Procedures

Comment: TCASE opposed extending the prior written notice timeline from five school days to ten calendar days, citing potential delays in admission, review, and dismissal meetings and service implementation, reduced flexibility, and risks of outdated individualized education programs and recommended maintaining the current timeline or allowing flexibility by mutual agreement.

Response: The agency disagrees that the timeline should remain at five school days because a ten-calendar-day timeline better supports meaningful parent participation. However, based on public comment, implementation of the ten-calendar-day requirement has been delayed until July 1, 2027, to allow school systems time to prepare for the change.

STATUTORY AUTHORITY. The amendment is adopted 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.

<rule>

§89.1005. Instructional Arrangements and Educational Environments.

(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.

(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) Subject to §89.1075(f) of this title (relating to General Program Requirements and Local District Procedures), 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 committee.

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STATUTORY AUTHORITY. The amendments are adopted 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>

§89.1040. 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), 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 in its report any situations, conditions, or circumstances that might impact the validity of an evaluation instrument or assessment used in the data collection or review process, and the team must include, but is not limited to, the following:

(1) a 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

(ii) the convergence of a body of evidence from multiple direct and indirect sources after an individually administered test of cognitive abilities has been attempted or completed and the multidisciplinary team determines that standardized measures of cognitive ability are invalid, inaccessible, or inappropriate and explains why they 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, dysgraphia;

(IV) basic reading skill, which includes dyslexia;

(V) reading fluency skills, which includes 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 specific 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, §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 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, 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 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 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, including Early Childhood Intervention (ECI), if applicable, 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, including ECI, evaluation date, when available, 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 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).

(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 day 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 Residential Placement Programs for the Provision of a Free Appropriate Public Education (FAPE) and Day Placement Programs for the Provision of a Free Appropriate Public Education (FAPE)).

(h) This subsection is effective until July 1, 2027. 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 five school days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.

(i) Beginning July 1, 2027, 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 days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.

(j) The transition and employment designee required of each school district or shared services arrangement by TEC, §29.011, must complete the required training annually 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 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 adopted 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 adopted 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 its 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 day 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 its 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 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 adopted 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 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, in accordance with this section and the student attendance accounting handbook adopted under §129.1025 of this title.

(c) Funding for the 2026-2027 school year shall be determined in accordance with TEC, §48.1022.

(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. Funds generated by TEC, §48.102 and §48.1021, may be spent on the overall special education program and are not limited to the student who 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 from birth through age two with a visual impairment, who are deaf or hard of hearing, or who are deafblind who are provided services by the district according to an individualized family services plan 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.

(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 education program in order for students with disabilities to be included in the general education program. Support services shall include, but not be limited to, collaborative planning, co-teaching, small group instruction with students with and without disabilities, direct instruction to students receiving special education and related services, or other support services determined necessary by the admission, review, and dismissal committee for an appropriate program for the student with disabilities. Assignments may include duties supportive to school operations equivalent to those assigned to general education personnel.

(b) Personnel assigned to provide support services to the general 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 are directly related to the development and implementation of individualized education programs of students and which are not ordinarily purchased for the general education 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 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, 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.