

The Texas Education Agency (TEA) proposes amendments to §§89.1050, 89.1055, and 89.1096, concerning special education services. The proposed amendments would update statutory authority and clarify current program practices and requirements in accordance with House Bill (HB) 2, Senate Bill (SB) 568, and SB 2, 89th Texas Legislature, Regular Session, 2025.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 89.1050 defines the criteria for the admission, review, and dismissal (ARD) committee.

The proposed amendment to subsection (a) would align reference to federal and state law by adding new statutory references and repealing statutory references in accordance with HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025.

The proposed amendment to subsection (c)(1)(I) would add criteria for a career and technical education (CTE) representative of the ARD committee to be knowledgeable about the availability of CTE programs offered in the district.

The proposed amendment to subsection (c)(2) would add reference 19 TAC §89.1131, Qualifications of Special Education, Related Service, and Paraprofessional Personnel, to describe the certification and licensure requirements for special education personnel.

Proposed new subsection (c)(3) would establish that a prekindergarten teacher who is dual certified in general education and special education and is responsible for implementing the child's individualized education program (IEP) could represent both the general and special education teacher requirements of the ARD committee.

The proposed amendment to subsection (c)(4)(A)-(C) would clarify ARD committee requirements for teachers of students with visual impairments, who are deaf or hard of hearing or who are deaf-blind.

A proposed amendment to subsection (d) would update the timeframe for a school district to provide parents with written notice of the ARD committee meeting from 5 school days to 10 calendar days.

The proposed amendment to subsection (e) would clarify a requirement for school districts to provide the parent notice of scheduling options for the ARD committee meeting within 10 school days of receipt of a written request for a meeting.

Subsections (f) and (g) would be modified to update terminology and align with the proposed amendment to change the timeframe to 10 calendar days.

Proposed new subsections (h)-(j) would clarify school district requirements for providing required information, parent notice, and ARD committee procedures when residential placements or changes in the location of special education and related services are considered, consistent with applicable state and federal law.

Section 89.1055 establishes criteria for the IEP.

The proposed amendment to subsection (a) would clarify that all elements of the rule must be followed.

The proposed amendment to subsection (b) would clarify the timeline for review of the annual IEP.

Proposed new subsection (c)(1)-(4) would clarify the information that must be included in the present levels of academic achievement and functional performance.

The proposed amendment to subsection (d) would clarify the responsibilities of the ARD committee in establishing annual goals.

The proposed amendment to subsection (d)(1)(i) and (ii) would clarify when an annual goal is needed.

The proposed amendment to subsection (d)(2)(i)-(iii) would clarify when short-term objectives are needed as a part of the annual goal.

Proposed new subsection (e)(1)-(3) would add criteria for the service delivery schedule.

Proposed new subsection (f) would add documentation of minutes a student spends in and out of the general education setting.

Proposed new subsection (g) would establish progress monitoring for the IEP and contingencies for making up any specially designed instruction missed due to emergencies, staffing shortages, or other unforeseen circumstances.

The proposed amendment to subsection (i)(2) would clarify that alternative state assessment documentation must be completed and included in the child's IEP.

The proposed amendment to subsection (j) would clarify what services are needed for extended school year services.

The proposed amendment to subsection (k) would update a statutory cross reference to align with current state law.

The proposed amendment to subsection (n), including new paragraphs (1)-(9), would establish criteria to be included in the IEP for students who are identified as having a specific learning disability (SLD) in dyslexia.

Proposed new subsection (o) would establish the documentation needed if portions of subsection (n) are not applicable to a student.

Proposed new subsection (p) would establish the documentation needed in the IEP if a student meets eligibility criteria for SLD in basic reading or reading fluency explaining why/how the student did not meet criteria for dyslexia.

Proposed new subsection (q)(1) and(2) would establish criteria to be included in the IEP for students identified as SLD in dysgraphia.

Proposed new subsection (r) would establish criteria for school districts related to School Health and Related Services (SHARS) reimbursement.

The proposed amendment to subsection (t) would clarify the language in accordance with current practice.

The proposed amendment to subsection (t)(4) would clarify language related to a functional vocational evaluation in accordance with current practice.

The proposed amendment to subsection (w), including paragraph (1), would clarify language, related to the first IEP to be in effect for students when they turn 18 years old, in accordance with current practice.

The proposed amendment to subsection (y) would clarify the language in accordance with current practice by updating the phrase "native language" to "primary language."

The proposed amendment to subsection (z)(3) would clarify the language in accordance with current practice by replacing "administrator" with "representative of the school district identified in §89.1050."

The proposed amendments to subsection (aa)(1)-(3) would clarify the language in accordance with current practice by updating the phrase "native language" to "primary language."

The proposed amendments to subsection (bb) would establish a timeframe for giving a parent the final IEP.

Proposed new subsection (cc)(4) would set criteria for extending timelines for transfer students if they are absent.

Section 89.1096 establishes provisions of services for students placed by their parents in private schools or facilities.

An amendment to the title of the section is proposed for clarification to align with SB 2, 89th Texas Legislature, Regular Session, 2025.

The proposed amendment to subsection (a) would align state rules with federal Individuals with Disabilities Education Act (IDEA) requirements by clarifying that parentally placed private school students do not have an individual entitlement to special education services.

The proposed amendment to subsection (a)(1) would clarify the use of the rule.

The proposed amendment to subsection (a)(1)(B) would clarify that the public school evaluating the child determines if a school is a private school.

The proposed amendment to subsection (b) would clarify when a district does not have to provide educational services to a parentally placed private school student.

Existing subsection (c), related to dual enrollment of a student aged 3 or 4, would be removed.

The proposed amendment to re-lettered subsection (c) would clarify when a parent can request an individualized services plan.

Proposed new subsections (d)-(j) would establish new regulations based on SB 2, 89th Texas Legislature, Regular Session, 2025. The proposed new language would clarify the IEP criteria used to determine eligibility for participation in the Texas Education Savings Account under Texas Education Code, §29.3615, including the minimum components of an IEP developed solely for eligibility purposes, which also allowing the use of an IEP written in compliance with the IDEA.

**FISCAL IMPACT:** Jennifer Alexander, associate commissioner of special populations and student supports, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand existing regulations. The proposed amendments would expand ARD committee and IEP requirements; establish the IEP criteria used to determine eligibility for participation in the Texas Education Savings Account program; and update statutory cross references to align with HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease

the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Alexander has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to define the criteria requirements for the ARD committee in §89.1050; establish criteria requirements for the IEP in §89.1055; and in §89.1096, to establish provisions of services for students placed by their parents in private schools or facilities and establish the IEP requirements used to determine eligibility for participation in the Texas Education Savings Account program, which is different than IEPs used in schools under IDEA. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

**PUBLIC COMMENTS:** TEA requests public comments on the proposal, including, per Texas Government Code, §2001.024(a)(8), information related to the cost, benefit, or effect of the proposed rule and any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person. The public comment period on the proposal begins April 10, 2026, and ends May 11, 2026. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Public hearings will be conducted to solicit testimony and input on the proposed amendments at 9:30 a.m. on April 23 and 24, 2026. The public may participate in either hearing virtually by linking to the hearing at <https://us02web.zoom.us/j/83220111674>. Anyone wishing to testify must be present at 9:30 a.m. and indicate to TEA staff their intent to comment and are encouraged to also send written testimony to [sped@tea.texas.gov](mailto:sped@tea.texas.gov). Each hearing will conclude once all who have signed in have been given the opportunity to comment. Questions about the hearing should be directed to Derek Hollingsworth, Special Populations Policy and Compliance, [Derek.Hollingsworth@tea.texas.gov](mailto:Derek.Hollingsworth@tea.texas.gov).

**STATUTORY AUTHORITY.** The amendments are proposed under Texas Education Code (TEC), §29.001, as amended by House Bill (HB) 2 and Senate Bill (SB) 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the implementation of special education law; TEC, §29.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the Texas Education Agency (TEA) to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for completing full individual and initial evaluations of a student for purposes of special education services; TEC, §29.005, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for developing a student's individualized education program (IEP) prior to a student enrolling in a special education program; TEC, §29.010, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires TEA to develop and implement a monitoring system for school district compliance with federal and state laws regarding special education; TEC, §29.011, which requires the commissioner to adopt procedures for compliance with federal requirements relating to transition services for students enrolled in special education programs; TEC, §29.0111, which appropriates state transition planning to begin for a student no later than the student turning 14 years of age; TEC, §29.012, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which requires the commissioner to develop and implement procedures for compliance with federal requirements relating to transition services for students enrolled in a special education program; 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, §29.3615, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes IEP evaluations for a student who is not enrolled in a school district or open-enrollment charter school; TEC, §38.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025, which establishes criteria for the screening and treatment for dyslexia and related disorders; Texas Government Code, §392.002, which requires the use of person first respectful language; 34 CFR, §300.101, which defines the requirement for all children residing in the state between the ages of 3-21 to have a free appropriate public education available; 34 CFR, §300.129, which establishes criteria for the state responsibility regarding children in private schools; 34 CFR, §300.131, which establishes child find for parentally placed private school children with disabilities; 34 CFR, §300.132, which establishes the basic requirement for the

provision of services for parentally placed private school children with disabilities; 34 CFR, §300.133, which establishes criteria for expenditures; 34 CFR, §300.136, which establishes criteria for compliance; 34 CFR, §300.139, which establishes the criteria for location of services and transportation; 34 CFR, §300.142, which establishes criteria for use of personnel; 34 CFR, §300.143, which prohibits separate classes; 34 CFR, §300.307, which establishes the criteria for determining specific learning disabilities; 34 CFR, §300.310, which establishes criteria for observation to document the child's academic performance and behavior in the areas of difficulty; 34 CFR, §300.311, which establishes criteria for specific documentation for the eligibility determination; 34 CFR, §300.320, which defines the IEP; 34 CFR, §300.322, which establishes criteria for parent participation; and 34 CFR, §300.323, which establishes criteria for when IEPs must be in effect.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§29.001, as amended by House Bill (HB) 2 and Senate Bill (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; 29.005, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.010, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.011; 29.0111; 29.012, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.026, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; 29.3615, as added by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; and 38.003, as amended by HB 2 and SB 568, 89th Texas Legislature, Regular Session, 2025; Texas Government Code, §392.002; and 34 Code of Federal Regulations (CFR), §§300.101, 300.129, 300.131, 300.132, 300.133, 300.136, 300.139, 300.142, 300.143, 300.307, 300.310, 300.311, 300.320, 300.322, and 300.323.

<rule>

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

(a) Each school district must establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full individual and initial evaluation is conducted pursuant to §89.1011 of this title (relating to Full Individual and Initial Evaluation). The ARD committee is the individualized education program (IEP) team defined in federal law and regulations, including, specifically, 34 Code of Federal Regulations (CFR), §300.321. The ARD committee ~~[school district]~~ is responsible for all of the functions for which the IEP team is responsible under federal and state law and regulations ~~[and for which the ARD committee is responsible under state law]~~, including the following:

- (1) 34 CFR, §§300.320-300.325, and Texas Education Code (TEC), §29.005 (individualized education programs);
- (2) 34 CFR, §§300.145-300.147 (relating to placement of eligible students in private schools by a school district);
- (3) 34 CFR, §§300.132, 300.138, and 300.139 (relating to the development and implementation of service plans for eligible students placed by parents in private school who have been designated to receive special education and related services);
- (4) 34 CFR, §300.530 and §300.531, and TEC, §37.004 (disciplinary placement of students with disabilities);
- (5) 34 CFR, §§300.302-300.306 (relating to evaluations, re-evaluations, and determination of eligibility);
- (6) 34 CFR, §§300.114-300.117 (relating to least restrictive environment);
- ~~(7) TEC, §28.006 (Reading Diagnosis);~~
- ~~(7) [(8)]~~ TEC, §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction);
- ~~(8) [(9)]~~ TEC, §28.0212 (Junior High or Middle School Personal Graduation Plan);
- ~~(9) [(10)]~~ TEC, §28.0213 (Intensive Program of Instruction);

- (10) TEC, §28.025 (High School Diploma and Certificate; Academic Achievement Record);
- (11) TEC, Chapter 29, Subchapter A;
- (12) TEC, §29.048 (Admission, Review and Dismissal Committee Duties);
- (13) ~~(11)~~ TEC, Chapter 29, Subchapter I (Programs for Students Who Are Deaf or Hard of Hearing);
- (14) TEC, Chapter 30, Subchapters A, B, and C;
- ~~(12) TEC, §30.002 (Education for Children with Visual Impairments);~~
- ~~(13) TEC, §30.003 (Support of Students Enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf);~~
- (15) ~~(14)~~ TEC, §33.081 (Extracurricular Activities);
- ~~(15) TEC, §37.004 (Placement of Students with Disabilities);~~
- (16) TEC, §37.307 (Placement and Review of Student with Disability);
- (17) TEC, §38.034 (School Health and Related Services Program; Eligibility for Audiology Services);
- (18) TEC, §39.023 (Adoption and Administration of Instruments);
- (19) TEC, §39.025 (Secondary-Level Performance Required); and
- ~~(17) TEC, Chapter 39, Subchapter B (Assessment of Academic Skills); and~~
- (20) ~~(18)~~ TEC, §48.102 (Special Education).

(b) For a student from birth through two years of age with a visual impairment or who is deaf or hard of hearing, an individualized family services plan meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§300.320-300.324, and the memorandum of understanding between the Texas Education Agency and the Texas Health and Human Services Commission. For students three years of age and older, school districts must develop an IEP.

(c) ARD committee membership.

- (1) ARD committees must include the following:
  - (A) the parents, as defined by 34 CFR, §300.30, of the student;
  - (B) not less than one general education teacher of the student (if the student is, or may be, participating in the general education environment) who must, to the extent practicable, be a teacher who is responsible for implementing a portion of the student's IEP;
  - (C) not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;
  - (D) a representative of the school district who:
    - (i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;
    - (ii) is knowledgeable about the general education curriculum; and
    - (iii) is knowledgeable about the availability of resources of the school district;
  - (E) an individual who can interpret the instructional implications of evaluation results, who may be a member of the committee described in subparagraphs (B)-(D) and (F) of this paragraph;
  - (F) at the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate;
  - (G) whenever appropriate, the student with a disability;

- (H) to the extent appropriate, with the consent of the parents or a student who has reached the age of majority, a representative of any participating agency that is likely to be responsible for providing or paying for transition services;
  - (I) when considering initial or continued placement of a student in career and technical education (CTE), a representative from CTE who is knowledgeable about the availability of CTE programs offered in the district, who may be a member of the committee described in subparagraphs (B) and (D) of this paragraph [career and technical education (CTE), preferably the teacher, when considering initial or continued placement of a student in CTE]; and
  - (J) a professional staff member who is on the language proficiency assessment committee who may be a member of the committee described in subparagraphs (B) and (C) of this paragraph, if the student is identified as emergent bilingual.
- (2) The special education teacher or special education provider that participates in the ARD committee meeting must be appropriately certified or licensed as required by 34 CFR, §300.156, and further described in §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel).
- (3) If a teacher is dual certified in general education and special education and is serving as a prekindergarten teacher, and the teacher is or would be the only general education teacher responsible for implementing the child's IEP, that teacher may represent both the general and special education teacher as required by paragraph (1)(B) and (C) of this subsection.
- (4) ~~(3)~~ If the student is:
- (A) a student with a suspected or documented visual impairment, the ARD committee must include a teacher who is certified in the education of students with visual impairments who may be a member of the committee described in paragraph (1)(C) of this subsection ;
  - (B) a student who is suspected or documented to be deaf or hard of hearing, the ARD committee must include a teacher who is certified in the education of students who are deaf or hard of hearing who may be a member of the committee described in paragraph (1)(C) of this subsection ;
  - (C) a student with suspected or documented deaf-blindness, the ARD committee must include either a teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students who are deaf or hard of hearing , or a teacher with a deafblind certification, who may be a member of the committee described in paragraph (1)(C) of this subsection ; or
  - (D) a student who is suspected or identified with dyslexia, when determining initial or continued eligibility, the ARD committee must include a professional who meets the requirements of 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.
- (5) ~~(4)~~ An ARD committee member is not required to attend an ARD committee meeting if the conditions of either 34 CFR, §300.321(e)(1), regarding attendance, or 34 CFR, §300.321(e)(2), regarding excusal, have been met.
- (d) The school district must take steps to ensure that one or both parents are present at each ARD committee meeting or are afforded the opportunity to participate, including notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed upon time and place. Additionally, a school district must allow parents who cannot attend an ARD committee meeting in person to participate in the meeting through other methods such as through telephone calls or video conferencing. The school district must provide the parents with written notice of the ARD committee meeting that meets the requirements in 34 CFR, §300.322, at least 10 calendar [five school] days before the meeting unless the parents agree to a shorter timeframe.

- (e) Within 10 school days of ~~Upon~~ receipt of a written request for an ARD committee meeting from a parent, the school district must:
- (1) provide the parent notice of scheduling options for ~~schedule and convene~~ a meeting in accordance with the procedures in subsection (d) of this section; or
  - (2) ~~within five school days,~~ provide the parent with written notice explaining why the district refuses to convene a meeting.
- (f) The school district must provide the parent with a written notice required under subsection (d) or (e)(2) of this section in the parent's primary ~~native~~ language, unless it is clearly not feasible to do so. If the parent's primary ~~native~~ language is not a written language, the school district must take steps to ensure that the notice is translated orally or by other means to the parent in his or her primary ~~native~~ language or other mode of communication so that the parent understands the content of the notice.
- (g) 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 primary ~~native~~ language or other mode of communication. This notice must be provided to the parent at least 10 calendar ~~five school~~ days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.
- (h) When a new, proposed, or existing residential placement is discussed at a student's ARD committee meeting, the materials under TEC, §29.0056, must be provided to student's parent.
- (i) When a school district is considering a change in the location of the provision of a student's special education and related services as documented in the student's IEP, the district must determine whether the change would substantially or materially alter the student's educational program. A proposed change in location must be communicated to the parent as soon as reasonably possible. When the proposed change would constitute a change in educational placement with any of the following being true, the school district must hold an ARD committee meeting and provide the parent prior written notice under 34 CFR, §300.503:
- (1) the proposed change in location would revise the student's IEP;
  - (2) the proposed change in location would decrease the extent to which the student is educated with nondisabled peers, consistent with the least restrictive environment requirements in 34 CFR, §§300.114-300.116;
  - (3) the proposed change in location would alter the student's access to non-academic or extracurricular services or activities, as described in 34 CFR, §300.117; or
  - (4) the proposed change in location represents a different point on the continuum of alternative placements required under 34 CFR, §300.115.
- (j) If the parent believes the factors in subsection (i) of this section apply to any proposed change in location, the parent may submit a written request for an ARD committee meeting and the district must respond in accordance with subsection (e) of this section.

#### **§89.1055. Individualized Education Program.**

- (a) The individualized education program (IEP) developed by the admission, review, and dismissal (ARD) committee for each student with a disability must comply with the requirements of 34 Code of Federal Regulations (CFR), §300.320 and §300.324, and include all applicable information under Texas Education Code (TEC), §29.0051, and this section.
- (b) A student's IEP must be reviewed by the student's ARD committee at least annually, which means no later than 365 days after the date of the last annual review.
- (c) A statement of the student's present levels of academic achievement and functional performance (PLAAFP) must:

- (1) include how the student's disability affects the student's involvement and progress in the general education curriculum, or, for preschool children, how the disability affects the student's participation in appropriate activities;
- (2) address all disability conditions and related services needs;
- (3) identify what the student is expected to do in the general education curriculum in academic areas and baseline data that describes the student's current skills; and
- (4) describe baseline data that describes the student's current skills or behaviors in functional areas.

(d) ~~(b)~~ To be considered a measurable annual goal under 34 CFR, §300.320(a)(2), a goal must include the components of a timeframe, condition, behavior, and criterion. The ARD committee must consider the unique needs of the student and the curriculum standards to determine where in the curriculum the student may encounter barriers due to the disability or disabilities. An annual goal must be developed in areas where a critical need is identified and must not simply be restatements of the student's enrolled grade level essential knowledge and skills as described by Chapters 110-117 and 120 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading, Texas Essential Knowledge and Skills for Mathematics, Texas Essential Knowledge and Skills for Science, Texas Essential Knowledge and Skills for Social Studies, Texas Essential Knowledge and Skills for Languages Other Than English, Texas Essential Knowledge and Skills for Health Education, Texas Essential Knowledge and Skills for Physical Education, Texas Essential Knowledge and Skills for Fine Arts, and Other Texas Essential Knowledge and Skills). While at least one measurable annual goal is required, the number of annual goals will be determined by the ARD committee after examination of the student's PLAAFP ~~[present levels of academic achievement and functional performance]~~ and areas of need.

- (1) Annual goals are also required in the following circumstances:
  - (A) ~~(i)~~ when the content of a subject/course is modified, whether the content is taught in a general or special education setting, in order to address how the content is modified; or  
and
  - (B) when a special education teacher or service provider is designated as the teacher of record or is the provider solely responsible for delivering academic or functional instruction or related services.
  - ~~(ii) when a student is removed from the general education setting for a scheduled period of time but the content of the subject/course is not modified (e.g., a student who is progressing on enrolled grade level curriculum but requires a more restrictive environment for a period of time due to behavioral concerns).]~~
- (2) Short-term objectives/benchmarks, used as intermediary steps or milestones toward accomplishing an annual goal, may be included in a measurable annual goal but cannot be used as the criterion to indicate mastery of the annual goal. An ARD committee may choose to use short-term objectives/benchmarks for any student but must use them if the ARD committee has determined that a student will not participate in the general state assessment. Guidelines for short-term ~~]~~ Short term objectives/benchmarks are as follows :
  - (A) at least two short-term objectives/benchmarks must be included in an annual goal;
  - (B) each short-term objective/benchmark must include a timeframe, condition, behavior, and criterion; and
  - (C) each short-term objective/benchmark within an annual goal must have distinct time frames and differ in at least one additional component to ensure clarity and individualized progress monitoring.
  - ~~(i) must be included in an annual goal if the ARD committee has determined that a student will not participate in the general state assessment; and]~~
  - ~~(ii) regardless of whether the objectives/benchmarks are related to a student not participating the general state assessment, cannot be used as the criterion to indicate mastery of the annual goal.]~~

- (e) The ARD committee must document in the student's IEP the service delivery schedule that specifies the projected date for the beginning of the specially designed instruction and any related services that will be provided to the student, as well as the following for all specially designed instruction and related services:
- (1) frequency, which is how often the specially designed instruction or related service will be provided within a designated time frame;
  - (2) duration, which is the length of each session, if applicable, or any determined or anticipated end date of instruction or service; and
  - (3) location/classroom setting, which is whether the specially designed instruction or related service will be provided in a general educational location/classroom/setting or a special education location/classroom/setting.
- (f) The IEP must document on average how many minutes in the student's instructional day is spent in a location/classroom/setting outside of the general education location/classroom/setting. The IEP must also document the percentage of the student's instructional day, on average, that the student spends in a general education location/classroom/setting.
- (g) In addition to regular progress monitoring of the implementation of a student's IEP and the student's measurable annual goals, the school district must have procedures in place on how it will document compliance with the provision of any student's specially designed instruction and related services, including supplementary aids and services, and how the district will attempt to make up any student's missed specially designed instruction or related services and contingencies for emergencies, staffing issues, or other unforeseen circumstances.
- (h) ~~(e)~~ The IEP must include a statement of any individual appropriate and allowable accommodations in the administration of assessment instruments developed in accordance with TEC, §39.023(a)-(c), or districtwide assessments of student achievement (if the district administers such optional assessments) that are necessary to measure the academic achievement and functional performance of the student on the assessments.
- (i) ~~(d)~~ If the ARD committee determines that the student will not participate in a general statewide or districtwide assessment of student achievement (or part of an assessment), the following requirements must be met.
- (1) The IEP must include a statement explaining:
    - (A) why the student cannot participate in the general assessment; and
    - (B) why the particular alternate assessment selected is appropriate for the student  ~~. [and]~~
  - (2) The Texas Education Agency's alternate assessment participation requirements form, if one is made available to school districts, must be completed and included in the student's IEP to document the statement required under this subsection.
- (j) ~~(e)~~ If the ARD committee determines that the student is in need of extended school year (ESY) services, as described in §89.1065 of this title (relating to Extended School Year Services), then the IEP must identify [which of the goals and objectives in] the IEP services that will be addressed during ESY services.
- (k) ~~(f)~~ For students with visual impairments, from birth through 21 years of age, the IEP or individualized family services plan must also meet the requirements of TEC, §30.002 ~~[§30.002(e)]~~ .
- (l) ~~(e)~~ For students with autism eligible under §89.1040(c)(1) of this title (relating to Eligibility Criteria), the strategies described in this subsection must be considered, at least annually based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed, addressed in the IEP:
- (1) extended educational programming (for example: extended day and/or ESY [extended school year] services that consider the duration of programs/settings based on data collected related to behavior, social skills, communication, academics, and self-help skills);
  - (2) daily schedules reflecting minimal unstructured time and active engagement in learning activities (for example: lunch, snack, and recess periods that provide flexibility within routines; adapt to

- individual skill levels; and assist with schedule changes, such as changes involving substitute teachers and pep rallies);
- (3) in-home and community-based training or viable alternatives that assist the student with acquisition of social, behavioral, communication, and self-help skills (for example: strategies that facilitate maintenance and generalization of such skills from home to school, school to home, home to community, and school to community);
  - (4) positive behavior support strategies based on relevant information, for example:
    - (A) antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions; and
    - (B) a behavioral intervention plan developed from a functional behavioral assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings and is implemented and reviewed in accordance with subsection (s) [(4)] of this section;
  - (5) beginning at any age, consistent with subsection (u) [(4)] of this section, futures planning for integrated learning and training, living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments, including self-determination and self-advocacy skills;
  - (6) parent/family training and support, provided by qualified personnel with experience in autism, that, for example:
    - (A) provides a family with skills necessary for a student to succeed in the home/community setting;
    - (B) includes information regarding resources (for example: parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching/management techniques related to the student's curriculum); and
    - (C) facilitates parental carryover of in-home training (for example: strategies for behavior management and developing structured home environments and/or communication training so that parents are active participants in promoting the continuity of interventions across all settings);
  - (7) suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social/behavioral progress based on the student's developmental and learning level (acquisition, fluency, maintenance, generalization) that encourages work towards individual independence as determined by, for example:
    - (A) adaptive behavior evaluation results;
    - (B) behavioral accommodation needs across settings; and
    - (C) transitions within the school day;
  - (8) communication interventions, including language forms and functions that enhance effective communication across settings (for example: augmentative, incidental, and naturalistic teaching);
  - (9) social skills supports and strategies based on social skills assessment/curriculum and provided across settings ( for example: [e.g.] peer-based instruction and intervention, video modeling, social narratives, and role playing);
  - (10) professional educator/staff support (for example: training provided to personnel who work with the student to ensure [assure] the correct implementation of techniques and strategies described in the IEP); and
  - (11) teaching strategies based on peer-reviewed [peer-reviewed] , research-based practices for students with autism (for example: those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, or social skills training).

- (m) ~~(h)~~ If the ARD committee determines that services are not needed in one or more of the areas specified in subsection (l) ~~(g)~~ of this section, the IEP must include a statement to that effect and the basis upon which the determination was made.
- (n) ~~(i)~~ For students identified with the specific learning disability of dyslexia ~~[or a related disorder]~~ eligible under §89.1040(c)(9) of this title ~~[relating to Eligibility Criteria]~~, the IEP must also be developed and implemented in accordance with law, this section, and the requirements under §74.28 of this title (relating to Students with Dyslexia and Related Disorders), including any handbook adopted under §74.28 of this title ~~[in the rule]~~. This includes documentation of:
- (1) the determination by the ARD committee that the student meets eligibility as a child with a disability due to the specific learning disability of dyslexia and the need for evidence-based dyslexia instruction, which is a special education service;
  - (2) the presence and involvement of the dyslexia member required by TEC, §29.0031, as noted by the signature in the IEP documenting the member's presence and involvement at the ARD committee meeting;
  - (3) decisions around appropriate reading instruction, which must include the program name and all components and delivery of dyslexia instruction as identified under §74.28 of this title, including any handbook adopted in the rule;
  - (4) how the district's evidence-based dyslexia instruction program addresses the required components of dyslexia instruction and whether the student's PLAAFP or other areas of the IEP show evidence that the program must be supplemented with a focus on one or more components;
  - (5) how the program addresses the required instructional delivery methods and whether the student's PLAAFP or other areas of the IEP show evidence that the program must be supplemented to meet the student's needs;
  - (6) the fidelity statements/requirements that are included with the program and how those will be delivered and/or intensified for the student;
  - (7) a fully trained provider of dyslexia instruction identified under §74.28 of this title being assigned to implement the program for the student;
  - (8) whether the IEP goal progress report will meet the requirements for the dyslexia progress report required under TEC, §29.0031(d), or whether a separate progress report will be communicated to a parent; and
  - (9) the student's parent being notified, either at the ARD committee meeting or by another method, of the Talking Book Program administered by the Texas State Library of Archives Commission and other available audio book services as required by TEC, §29.0031(e).
- (o) If the ARD committee determines that one or more of the areas specified in subsection (n)(3)-(6) of this section are not applicable to the student, the IEP must include a statement to that effect and the basis upon which the determination was made.
- (p) A district is prohibited from identifying a specific learning disability as one solely in basic reading or reading fluency as a means to circumvent the requirements for students identified with dyslexia. If a specific learning disability in basic reading or reading fluency is not also identified as dyslexia, the IEP must document why and how the committee came to that conclusion.
- (q) For students identified with the specific learning disability of dysgraphia eligible under §89.1040(c)(9) of this title, the IEP must also be developed and implemented in accordance with law, this section, and the requirements under §74.28 of this title, including any handbook adopted under §74.28 of this title. This includes documentation of:
- (1) the determination by the ARD committee that the student meets eligibility as a child with a disability due to the specific learning disability of dysgraphia and the need for special education and related services; and

- (2) decisions around appropriate writing instruction, including whether the student needs explicit, systematic instruction in handwriting; handwriting and spelling; or handwriting, spelling, and written expression.
- (r) For students whose special education and related services also meet the criteria for medical and transportation services eligible for reimbursement under the School Health and Related Services (SHARS) Medicaid program, and the district is or expects to become an eligible provider, the student's IEP must document those services the district plans to submit for SHARS reimbursement determined to be both necessary for a free appropriate public education for purposes of compliance with the Individuals with Disabilities Education Act and medically necessary and reasonable for purposes of Medicaid reimbursement. Each student's IEP shall contain the necessary information to comply with the requirements set by the Texas Health and Human Services Commission to help ensure that submissions for reimbursement are accurate.
- (s) ~~(t)~~ If the ARD committee determines that a behavior improvement plan or a behavioral intervention plan is appropriate for a student, that plan must be included as part of the student's IEP and provided to each teacher with responsibility for educating the student. If a behavior improvement plan or a behavioral intervention plan is included as part of a student's IEP, the ARD committee shall review the plan at least annually, and more frequently if appropriate, to address:
- (1) changes in a student's circumstances that may impact the student's behavior, such as:
    - (A) the placement of the student in a different educational setting;
    - (B) an increase or persistence in disciplinary actions taken regarding the student for similar types of behavioral incidents;
    - (C) a pattern of unexcused absences; or
    - (D) an unauthorized, unsupervised departure from an educational setting; or
  - (2) the safety of the student or others.
- (t) ~~(k)~~ Not later than the first IEP to be in effect when the student turns 14 years of age, the ARD committee must discuss ~~consider~~ and ~~if appropriate,~~ address the following issues in the IEP:
- (1) appropriate student involvement in the student's transition to life outside the public school system;
  - (2) appropriate involvement in the student's transition by the student's parents and other persons invited to participate by:
    - (A) the student's parents; or
    - (B) the school district in which the student is enrolled;
  - (3) appropriate postsecondary education options, including preparation for postsecondary-level coursework;
  - (4) whether a ~~an appropriate~~ functional vocational evaluation is appropriate ;
  - (5) appropriate circumstances for facilitating a referral of a student or the student's parents to a governmental agency for services or public benefits, including a referral to a governmental agency to place the student on a waiting list for public benefits available to the student such as a waiver program established under the Social Security Act (42 U.S.C. Section 1396n(c)), §1915(c); and
  - (6) the use and availability of appropriate:
    - (A) supplementary aids, services, curricula, and other opportunities to assist the student in developing decision-making skills; and
    - (B) supports and services to foster the student's independence and self-determination, including a supported decision-making agreement under Texas Estates Code, Chapter 1357.

(u) ~~(4)~~ Beginning not later than the first IEP to be in effect when the student turns 14 years of age, or younger if determined appropriate by the ARD committee, the IEP must include:

- (1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (2) the transition services, including courses of study, needed to assist the student in reaching the postsecondary goals.

(v) ~~(m)~~ The goals included in a student's IEP to comply with subsection (u) ~~(4)~~ of this section are intended to comply with the requirements in TEC, §29.011(a)(6) and (8).

(w) ~~(n)~~ Beginning not later than the first IEP to be in effect when the student turns 18 years of age (see §89.1049 of this title (relating to Parental Rights Regarding Adult Students) for notice requirement of transfer of rights), the ARD committee must discuss ~~consider~~ and ~~if appropriate,~~ address the following issues in the student's IEP:

- (1) appropriate involvement in the student's transition and future by the student's parents and other persons, if the parent or other person:
  - (A) is invited to participate by the student or the school district in which the student is enrolled; or
  - (B) has the student's consent to participate pursuant to a supported decision-making agreement under Texas Estates Code, Chapter 1357; and
- (2) the availability of age-appropriate instructional environments, including community settings or environments that prepare the student for postsecondary education or training, competitive integrated employment, or independent living, in coordination with the student's transition goals and objectives.

(x) ~~(o)~~ A student's ARD committee shall review at least annually the issues described in subsections (t), (u), and (w) ~~(k), (l), and (n)~~ of this section and, if necessary, update the portions of the student's IEP that address those issues.

(y) ~~(p)~~ All members of the ARD committee must have the opportunity to participate in a collaborative manner in developing the IEP. The school district must take all reasonable actions necessary to ensure that the parent understands the proceedings of the ARD committee meeting, including arranging for an interpreter for parents who are deaf or hard of hearing or whose primary ~~native~~ language is a language other than English. A decision of the ARD committee concerning required elements of the IEP must be made by mutual agreement if possible. The ARD committee may agree to an annual IEP or an IEP of shorter duration.

- (1) When mutual agreement about all required elements of the IEP is not achieved, the parent who disagrees must be offered a single opportunity to recess and reconvene the ARD committee meeting. The period of time for reconvening the ARD committee meeting must not exceed ten school days, unless the parties mutually agree otherwise. The ARD committee must schedule the reconvened meeting at a mutually agreed upon time and place. The opportunity to recess and reconvene is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense that may lead to a placement in a disciplinary alternative education program. The requirements of this subsection do not prohibit the ARD committee from recessing an ARD committee meeting for reasons other than the failure to reach mutual agreement about all required elements of an IEP.
- (2) During the recess, the ARD committee members must consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the ARD committee to reach mutual agreement.
- (3) If a recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the school district must implement the IEP that it has determined to be appropriate for the student.

- (4) Each member of the ARD committee who disagrees with the IEP developed by the ARD committee is entitled to include a statement of disagreement in the IEP.
- (z) ~~(e)~~ The written statement of the IEP must document the decisions of the ARD committee with respect to issues discussed at each ARD committee meeting. The written statement must also include:
- (1) the date of the meeting;
  - (2) the name, position, and signature of each member participating in the meeting; and
  - (3) an indication of whether the child's parents, the adult student, if applicable, and the representative of the school district as identified in §89.1050(c)(1)(D) of this title (relating to The Admission, Review, and Dismissal Committee) ~~administrator~~ agreed or disagreed with the decisions of the ARD committee.
- (aa) ~~(f)~~ If the student's parent is unable to speak English and the parent's primary ~~native~~ language is Spanish, the school district must provide a written copy or audio recording of the student's IEP translated into Spanish. If the student's parent is unable to speak English and the parent's primary ~~native~~ language is a language other than Spanish, the school district must make a good faith effort to provide a written copy or audio recording of the student's IEP translated into the parent's primary ~~native~~ language.
- (1) For purposes of this subsection, a written copy of the student's IEP translated into Spanish or the parent's primary ~~native~~ language means that all of the text in the student's IEP in English is accurately translated into the target language in written form. The IEP translated into the target language must be a comparable rendition of the IEP in English and not a partial translation or summary of the IEP in English.
  - (2) For purposes of this subsection, an audio recording of the student's IEP translated into Spanish or the parent's primary ~~native~~ language means that all of the content in the student's IEP in English is orally translated into the target language and recorded with an audio device. A school district is not prohibited from providing the parent with an audio recording of an ARD committee meeting at which the parent was assisted by an interpreter as long as the audio recording provided to the parent contains an oral translation into the target language of all of the content in the student's IEP in English.
  - (3) If a parent's primary ~~native~~ language is not a written language, the school district must take steps to ensure that the student's IEP is translated orally or by other means to the parent in his or her primary ~~native~~ language or other mode of communication.
- (bb) ~~(4)~~ A [Under 34 CFR, §300.322(f), a] school district must give a parent a written copy of the student's finalized IEP at no cost to the parent as soon as possible, but no later than within 10 school days after the date on which it is finalized. If [-A school district meets this requirement by providing a parent with a written copy of the student's IEP in English or by providing a parent with] a written translation of the student's IEP in the parent's primary ~~native~~ language in accordance with subsection (aa)(1) of this section will exceed 10 school days, the district must inform the parent and provide it to the parent as soon as the written translation is available. The district must document internally the date on which the IEP was provided to the parent and how it was provided (e.g., web portal, email, mail) [paragraph (1) of this subsection].
- (cc) ~~(s)~~ A school district must comply with the following for a student who is new to the school district.
- (1) When a student transfers to a new school district within the state in the same school year and the parents or previous school district verifies that the student had an IEP that was in effect in the previous district, the new school district must meet the requirements of 34 CFR, §300.323(e), by either adopting the student's IEP from the previous school district or developing, adopting, and implementing a new IEP. The timeline for adopting the previous IEP or developing, adopting, and implementing a new IEP is 20 school days from the date the student is verified as being a student eligible for special education services.
  - (2) When a student transfers from a school district in another state in the same school year and the parents or previous school district verifies that the student had an IEP that was in effect in the previous district, the new school district must, if determined necessary, conduct a full individual

and initial evaluation and make an eligibility determination and, if appropriate, develop, adopt, and implement a new IEP, within the timelines established in §89.1011 of this title (relating to Full and Individual Initial Evaluation). If the school district determines that an evaluation is not necessary, the timeline for the new district to develop, adopt, and implement a new IEP is 20 school days from the date the student is verified as being a student eligible for special education services.

- (3) Students who register in a new school district in the state during the summer when students are not in attendance for instructional purposes, the provisions of paragraphs (1) and (2) of this subsection apply based on whether the students are coming from an in-state or out-of-state school district. All other provisions in this subsection apply to these students.
- ~~(4)~~ If a student is absent from school on three or more days between the date the student is verified as being a student eligible for special education services and 20 school days, that period described by paragraphs (1) and (2) of this subsection may be extended by the number of school days equal to the number of school days during that period on which the student was absent.
- ~~(5)~~ (4) In accordance with 34 CFR, §300.323(g), the new school district must take reasonable steps to promptly obtain the student's records from the previous school district, and, in accordance with TEC, §25.002, and 34 CFR, §300.323(g), the previous school district must furnish the new school district with a copy of the student's records, including the student's special education records, not later than the 10th working day after the date a request for the information is received by the previous school district.
- ~~(6)~~ (5) If a parent hasn't already provided verification of eligibility and the new school district has been unable to obtain the necessary verification records from the previous district by the 15th working day after the date a request for the records was submitted by the new district to the previous district, the new school district must seek verification from the student's parent. If the parent provides verification, the new school district must comply with all paragraphs of this subsection. The new school district is encouraged to ask the parent to provide verification of eligibility before the 15th working day after the date a request for the records was submitted by the new district to the previous district. If the parent is unwilling or unable to provide such verification, the new district must continue to take reasonable steps to obtain the student's records from the previous district and provide any services comparable to what the student received at the previous district if they communicate those to the new district.
- ~~(7)~~ (6) For the purposes of this subsection, "verify" means that the new school district has received a copy of the student's IEP that was in effect in the previous district. The first school day after the new district receives a copy of the student's IEP that was in effect in the previous district begins the timelines associated with paragraphs (1) and (2) of this subsection.
- ~~(8)~~ (7) While the new school district waits for verification, the new school district must take reasonable steps to provide, in consultation with the student's parents, services comparable to those the student received from the previous district if the new school district has been informed by the previous school district of the student's special education and related services and placement.
- ~~(9)~~ (8) Once the new school district receives verification that the student had an IEP in effect at the previous district, comparable services must be provided to a student during the timelines established under paragraphs (1) and (2) of this subsection. Comparable services include provision of ESY services if those services are identified in the previous IEP or if the new district has reason to believe that the student would be eligible for ESY services.

**§89.1096. Provision of Services for Parentally Placed Private School Children with Disabilities [Students Placed by their Parents in Private Schools or Facilities] .**

- (a) In [Except as specifically provided in this section, in] accordance with 34 Code of Federal Regulations (CFR), §300.137, no eligible student who has been placed by his or her parent(s) in a private school or facility has an individual right to receive some or all of the special education and related services that the student would receive if he or she were enrolled in a public school . A [district. Except as specifically set

~~forth in this section, a~~] school district's obligations with respect to students placed by their parents in private schools are governed by 34 CFR, §§300.130-300.144.

- (1) For purposes of this section ~~[subsections (a) and (d) of this section only]~~, private school is defined as a private elementary or secondary school, including any pre-school, religious school, and institutional day or residential school, that:
  - (A) as required by 34 CFR, §300.13 and §300.130, is a nonprofit entity that meets the definition of nonprofit in 34 CFR, §77.1; and
  - (B) as determined by the public school evaluating the child for eligibility as a child with a disability under the Individuals with Disabilities Education Act (IDEA) based on documentation obtained by the public school, parent, or private school, provides elementary or secondary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and formal review and documentation of student progress.
- (2) A home school must meet the requirements of paragraph (1)(B) of this subsection, but not paragraph (1)(A) of this subsection, to be considered a private school for purposes of subsections (a) and (d) of this section.
- (b) When a student has been determined to be a child with a disability under IDEA but [who] has been placed by his or her parents directly in a private school or facility, [is referred to the local school district, the local district shall convene] an admission, review, and dismissal (ARD) committee meeting of the district of the child's residence will [to] determine whether the district can offer the student a free appropriate public education (FAPE). If the district determines that it can offer a FAPE to the student or if the parent declares that FAPE is not at issue when requesting an evaluation, the district is not responsible for providing educational services to the student, except as provided in 34 CFR, §§300.130-300.144, and [or] subsection (c) [(e)] of this section, until such time as the parents choose to enroll the student in public school full time.
- ~~(c) — Parents of an eligible student ages 3 or 4 shall have the right to "dual enroll" their student in both the public school and the private school beginning on the student's third birthday and continuing until the end of the school year in which the student turns five or until the student is eligible to attend a district's public school kindergarten program, whichever comes first, subject to paragraphs (1) (3) of this subsection. The public school district where a student resides is responsible for providing special education and related services to a student whose parents choose dual enrollment.]~~
  - ~~(1) — The student's ARD committee shall develop an individualized education program (IEP) designed to provide the student with a FAPE in the least restrictive environment appropriate for the student.]~~
  - ~~(2) — From the IEP, the parent and the district shall determine which special education and/or related services will be provided to the student and the location where those services will be provided, based on the requirements concerning placement in the least restrictive environment set forth in 34 CFR, §§300.114-300.120, and the policies and procedures of the district.]~~
  - ~~(3) — For students served under the provisions of this subsection, the school district shall be responsible for the employment and supervision of the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided shall be consistent with those provided for students enrolled only in the public school and shall remain the property of the school district.]~~
- (c) ~~[(d)]~~ Parents of a parentally placed private school child with a disability [an eligible student ages 3 or 4 who decline dual enrollment for their student] may request an individualized [a] services plan (ISP) as described in 34 CFR, §§300.130-300.144. The public school district where the private school is located is responsible for the development and implementation of an ISP [a services plan,] if the student is designated to receive services under 34 CFR, §300.132.
- ~~(d) — The individualized education program (IEP) for purposes of Texas Education Code (TEC), §29.3615, when the child is not enrolled in public school must, at minimum, include the following components:~~

- (1) a statement of the special education and related services and service delivery schedule that includes frequency, duration, and location, as well as the supplementary aids and services that would be provided to the child to enable the child to be involved in and progress in the child's enrolled grade level curriculum and to be educated and participate with children without disabilities to the maximum extent appropriate for the child's needs;
  - (2) an explanation of the extent, if any, to which the child would not participate with children without disabilities in a general education classroom;
  - (3) a statement of any individual appropriate accommodations or modifications that would be necessary for the child to make progress in the child's enrolled grade level curriculum; and
  - (4) the instructional arrangement or tiered funding level that is used to calculate the state special education funding allotment as determined by the decisions in paragraphs (1)-(3) of this subsection.
- (e) At the ARD committee meeting at which eligibility is determined for a child who is not enrolled in public school, the ARD committee must develop the IEP described by subsection (d) or (f) of this section if the child's parent has requested one because the parent is interested in applying for the education savings account program under TEC, Chapter 29, Subchapter J.
- (f) An IEP written in compliance with TEC, §29.005, and 34 CFR, §300.320, may also be used for purposes of eligibility under TEC, §29.3615.
- (g) A child who is not enrolled in public school at the time of application to the education savings account program described by TEC, Chapter 29, Subchapter J, but who previously attended public school within the last three school years and had an IEP in effect during the current school year or in at least one of the previous two school years will be reported as eligible under TEC, §29.3615, if an instructional arrangement or tiered funding level was reported through the Public Education Information Management System by the public school where the child was previously enrolled in at least one of those school years. When there are different instructional arrangements or tiered funding levels reported for one or more of the three school years, the instructional arrangement or tiered funding level that was most recently reported will be reported as eligible under TEC, §29.3615.
- (h) A child who had an IEP in effect in one or both of the previous school years at the time of application to the education savings account program described by TEC, Chapter 29, Subchapter J, but who is currently still enrolled in public school without an IEP in effect will not be reported as eligible under TEC, §29.3615.
- (i) The IEP developed solely for purposes of TEC, §29.3615, under subsection (d) of this section is not subject to appeal.
- (j) If a parent does not agree with the ARD committee's determination of eligibility for special education and related services, the parent may use the dispute resolution processes available under IDEA, Part B, 34 CFR, §300.1. et. seq., as applicable.
- ~~[(e) The school district shall provide special transportation with federal funds only when the ARD committee determines that the condition of the student warrants the service in order for the student to receive the special education and related services (if any) set forth in the IEP.]~~
- ~~[(f) Complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (e) of this section may be filed with the Texas Education Agency under the procedures in 34 CFR, §§300.151-300.153. Additionally, parents may request mediation as outlined in 34 CFR, §300.506. The procedures in 34 CFR, §§300.300, 300.504, 300.507, 300.508, and 300.510-300.518 (relating to due process hearings) do not apply to complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (e).]~~