

ATTACHMENT II
Text of Adopted Amendments to 19 TAC

Chapter 89. Adaptations for Special Populations

Subchapter AA. Commissioner's Rules Concerning Special Education Services

Division 1. General Provisions

§89.1005. Instructional Arrangements and Settings.

- (a)-(c) (No change.)
- (d) The appropriate instructional arrangement for students from birth through the age of two with visual ~~[and/or auditory]~~ impairments or who are deaf or hard of hearing shall be determined in accordance with the IFSP, current attendance guidelines, and the agreement memorandum between the Texas Education Agency (TEA) and Texas Health and Human Services Commission Early Childhood Intervention Services.
- (e)-(f) (No change.)

Division 2. Clarification of Provisions in Federal Regulations and State Law

§89.1035. Age Ranges for Student Eligibility.

- (a) (No change.)
- (b) In accordance with the Texas Education Code (TEC), §§29.003, 30.002(a), and 30.081, a free appropriate public education must be available from birth to students with visual ~~[or auditory]~~ impairments or who are deaf or hard of hearing .

§89.1040. Eligibility Criteria.

- (a)-(b) (No change.)
- (c) Eligibility definitions.
 - (1) (No change.)
 - (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 [subsections] (c)(3) and (12) [~~(c)(12)~~] of this section:
 - (A) meets the eligibility criteria for a student who is deaf or hard of hearing ~~[auditory impairment]~~ specified in subsection (c)(3) of this section and visual impairment specified in subsection (c)(12) of this section;
 - (B) (No change.)
 - (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 ~~[auditory impairment]~~ or for visual impairment, but the combination of such losses adversely affects the student's educational performance; or
 - (D) (No change.)
 - (3) Deaf or hard of hearing ~~[Auditory impairment]~~ . A student who is deaf or hard of hearing ~~[with an auditory impairment]~~ 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 are deaf or hard of 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 ~~[an auditory impairment]~~ must include an otological examination performed by an otolaryngologist or by a licensed medical doctor, with documentation that an otolaryngologist is not reasonably available,

and an audiological evaluation performed by a licensed audiologist. 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 amplification.

(4)-(8) (No change.)

(9) Specific learning [~~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 disturbance; 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), 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;

(IV) basic reading skill;

(V) reading fluency skills;

(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 disturbance;

(IV) cultural factors;

(V) environmental or economic disadvantage; or

(VI) limited English proficiency.

(C) ~~[(A)]~~ As ~~[Prior to and as]~~ part of the evaluation described in subparagraph (B) of this paragraph and 34 CFR, §§300.307-300.311, and in order to ensure that underachievement by ~~[it]~~ 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) (No change.)

(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, response to intervention progress monitoring results, 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.

(D) The school district must ensure that the student is observed in the student's learning environment, including the regular 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 admission, review, and dismissal (ARD) committee 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) of this section conduct an observation of the student's academic performance in the regular 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) of this section must observe the student in an environment appropriate for a student of that age.

(E) The determination of whether a student suspected of having a specific learning disability is a student with a disability as defined in 34 CFR, §300.8, must be made by the student's parents and a team of qualified professionals, which must include at least one person qualified to conduct individual diagnostic examinations of children such as a licensed specialist in school psychology, an educational diagnostician, a speech-language pathologist, or a remedial reading teacher and one of the following:

(i) the student's regular teacher;

(ii) if the student does not have a regular teacher, a regular 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.

~~[(B)] A student with a 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(e)(10), in accordance with the provisions in 34 CFR, §§300.307-300.311; and]~~

~~[(ii) does not achieve adequately for the student's age or meet state approved grade-level standards in oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving when provided appropriate instruction, as indicated by performance on multiple measures such as in-class tests; grade average over time (e.g. six weeks, semester); norm or criterion-~~

~~referenced tests; statewide assessments; or a process based on the student's response to evidence based intervention; and]~~

~~[(I) does not make sufficient progress when provided a process based on the student's response to evidence based intervention (as defined in 20 USC, §7801(21)), as indicated by the student's performance relative to the performance of the student's peers on repeated, curriculum based assessments of achievement at reasonable intervals, reflecting student progress during classroom instruction; or]~~

~~[(II) exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, grade level standards, or intellectual ability, as indicated by significant variance among specific areas of cognitive function, such as working memory and verbal comprehension, or between specific areas of cognitive function and academic achievement.]~~

(10)-(13) (No change.)

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

(a) (No change.)

(b) For a student from birth through two years of age with a visual impairment or who is deaf or hard of hearing ~~[and/or auditory impairments]~~, an individualized family services plan (IFSP) 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)-(2) (No change.)

(3) If the student is:

(A) (No change.)

(B) a student who is suspected to be deaf or hard of hearing [with a suspected or documented auditory impairment], the ARD committee must include a teacher who is certified in the education of students who are deaf or hard of hearing ~~[with auditory impairments]~~; or

(C) a student with suspected or documented deaf-blindness, the ARD committee must include 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 [with auditory impairments].

(4) (No change.)

(d)-(i) (No change.)

(j) A school district must comply with the following for a student who is new to [newly enrolled in] the school district.

(1)-(3) (No change.)

(4) A student with a disability who has an IEP in place from a previous in- or out-of-state school district and who enrolls in a new school district during the summer is not considered a transfer student for the purposes of this subsection or for 34 CFR, §300.323(e) or (f). For these students, the new school district must implement the IEP from the previous school district in full on the first day of class of the new school year or must convene an ARD committee meeting during the summer to revise the student's IEP for implementation on the first day of class of the new school year.

(k) (No change.)

§89.1070. Graduation Requirements.

- (a)-(f) (No change.)
- (g) All students graduating under this section must be provided with a summary of academic achievement and functional performance as described in 34 Code of Federal Regulations (CFR), §300.305(e)(3). This summary must consider, as appropriate, the views of the parent and student and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals. An evaluation as required by 34 CFR, §300.305(e)(1), must be included as part of the summary for a student graduating under subsections (b)(2); (b)(3)(A), (B), or (C) ; or (f)(4)(A), (B), or (C) of this section.
- (h) Students who participate in graduation ceremonies but who are not graduating under subsections (b)(2); (b)(3)(A), (B), or (C) ; or (f)(4)(A), (B), or (C) of this section and who will remain in school to complete their education do not have to be evaluated in accordance with subsection (g) [(h)] of this section.
- (i)-(k) (No change.)

Division 4. Special Education Funding

§89.1121. Distribution of State Funds.

- (a)-(b) (No change.)
- (c) The special education attendance must be converted to contact hours by instructional arrangement and then to full-time equivalents. The full-time equivalent for each instructional arrangement is multiplied by the annual amount equal to the [school district's adjusted] basic allotment or, if applicable, the sum of the basic allotment and the allotment under Texas Education Code (TEC), §48.101, [(ABA) or adjusted allotment (AA)] and then multiplied by the weight for the instructional arrangement as prescribed in TEC, §48.102(a) [the Texas Education Code (TEC), §42.151(a)]. Contact hours for any one student receiving special education services may not exceed six hours per day or 30 hours per week for funding purposes. The total contact hours generated per week is divided by 30 to determine the full-time equivalents. Special education full-time equivalents generated are deducted from the school district's ADA for purposes of the regular education allotment.
- (d)-(f) (No change.)
- (g) Students from birth through age two with a visual [or auditory] impairment, who are deaf or hard of hearing, or both who are provided services by the district according to an individual family services plan (IFSP) must be enrolled on the district home or regional day school campus and must be considered eligible for ADA on the same basis as other students receiving special education services.
- (h) Funding for the mainstream special education instructional arrangement must be based on the average daily attendance of the students in the arrangement multiplied by the annual amount equal to the basic allotment or, if applicable, the sum of the basic allotment and the allotment under TEC, §48.101, and the 1.15 weight as provided by TEC, §48.102(a) [ABA or AA and the 1.1 weight]. The attendance must not be converted to contact hours/full-time equivalents as with the other instructional arrangements.

Division 5. Special Education and Related Service Personnel

§89.1131. Qualifications of Special Education, Related Service, and Paraprofessional Personnel.

- (a) (No change.)
- (b) A teacher who holds a special education certificate or an endorsement may be assigned to any level of a basic special education instructional program serving eligible students 3-21 years of age, as defined in §89.1035(a) of this title (relating to Age Ranges for Student Eligibility), in accordance with the limitation of their certification, except for the following.
 - (1)-(3) (No change.)
 - (4) Teachers certified in the education of students who are deaf or hard of hearing [with auditory impairments] must be available to students who are deaf or hard of hearing [with auditory impairments], including deaf-blindness, through one of the school district's instructional options,

a regional day school program for the deaf, or a shared services arrangement with other school districts.

(5)-(7) (No change.)

(c)-(e) (No change.)