

The Texas Education Agency (TEA) adopts new §102.1601, concerning educational programs. The new section is adopted with changes to the proposed text as published in the October 8, 2021 issue of the *Texas Register* (46 TexReg 6667) and will be republished. The adopted new section implements the Supplemental Special Education Services (SSES) program added by Senate Bill (SB) 1716, 87th Texas Legislature, Regular Session, 2021.

REASONED JUSTIFICATION: SB 1716, 87th Texas Legislature, Regular Session, 2021, added Texas Education Code (TEC), Chapter 29, Subchapter A-1, to establish the SSES program. The program is designed to address concerns that have arisen as a result of the coronavirus pandemic for students receiving special education services. It provides additional funds for eligible students who are served in special education to use for supplemental services and materials. These supplemental services and materials are not and cannot be considered as part of the provision of a free appropriate public education as set out in a student's individualized education program. The SSES program expires September 1, 2024.

Under SB 1716, the commissioner is required to establish rules to implement and administer the SSES program. Adopted new §102.1601 establishes the parameters to allow eligible students to be provided with funds that may be used for goods and services with TEA-approved providers and vendors. In accordance with statute, certain eligible students will be given priority based on enrollment in a school district or open-enrollment charter school that is eligible for a compensatory education allotment. In addition, TEA may prioritize applicants with economic need based on qualification for the National School Lunch Program.

In response to public comment, the following changes were made to §102.1601 at adoption.

Subsection (d)(1)(A) was modified to include a statement that, in accordance with the Family Educational Rights and Privacy Act, the contract must require the vendor for the marketplace to protect and keep confidential students' personally identifiable information, which may not be sold or monetized.

Language throughout the rule was modified to consistently use the term "supplemental special education instructional materials."

Subsection (g)(5) was modified to clarify that the contracted education service center, not TEA, has full authority to reject or deny any purchase.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 8, 2021, and ended November 8, 2021. Public hearings on the proposal were held on October 19 and 21, 2021, via video conferencing. Following is a summary of the public comments received and the corresponding agency responses.

Comment: Texas Parent2Parent commented generally to express appreciation for the creation of the SSES grant program and believes that it will benefit students with disabilities.

Response: The agency agrees.

Comment: The Texas Classroom Teachers Association (TCTA) commented that it supports the use of the terms "supplemental special education instructional materials" and "supplemental special education services" as resources that support a student who is eligible for special education and related services but are not a part of the provision of compensatory services or a free appropriate public education (FAPE).

Response: The agency agrees.

Comment: EasterSeals Central Texas and the Coalition of Texans with Disabilities (CTD) recommended the revision of §102.1601 to ensure a means for checking to ensure that there are no conflicts of interest and that no TEA employee personally profits from a vendor contracting to participate in the SSES program.

Response: The agency disagrees that revision is required. The education service center (ESC) contracted to manage the SSES program will select the vendors to participate in the SSES program. Neither TEA nor its staff will have any role in such decisions and, therefore, will not have a conflict of interest.

Comment: The Arc of Texas recommended the revision of §102.1601 to put into place a monitoring and evaluation mechanism to ensure the efficacy of the SSES program.

Response: The agency disagrees that additional monitoring steps need to be included in the rule. The rule as written sets out requirements related to the application of funds and places restrictions related to use of funds and account usage.

Comment: The Texas Council of Administrators of Special Education (TCASE) noted the term "management system" is defined in §102.1601(a) but is used nowhere throughout the rest of the rule and questioned whether the term needs to be defined. TCASE recommended that the term "service provider" be defined because it is used throughout the rule. TCASE also noted that the defined term "supplemental special education instructional materials" is referred to as "materials" throughout the rule and recommended that either the definition in §102.1601(a)(5) specify that the term is referenced as "special education materials" throughout or that the other references in the rule be changed to read "supplemental special education instructional materials."

Response: The agency agrees in part. While the term "management system" is not used elsewhere in the rule, it is important to have the term defined so that any future guidance or program guidelines have a standard point of reference regarding the term. Regarding the term "service provider," TEA does not agree that it needs to be defined as the term is already generally understood. However, TEA agrees that there should be consistency in the rule regarding the use of the term "supplemental special education instructional materials" and has made changes to the rule at adoption to ensure consistency throughout.

Comment: Disability Rights Texas (DRTx), EasterSeals Central Texas, and The Arc of Texas requested the revision of §102.1601(b), regarding eligibility criteria, to specify that students who leave the special education system are not eligible for an SSES grant.

Response: The agency disagrees that the proposed revision is required. Subsection (b) is clear that only students who are eligible for special education may apply for SSES funds. Additionally, should a student's eligibility for special education change, subsection (h)(5) allows TEA to close or suspend an account and reclaim a portion or all of the funds from the account in the marketplace if a student is no longer eligible, subject to the appeal process referenced in subsection (e)(4).

Comment: TCASE recommended clarifying §102.1601(b)(2) to state whether a student who previously received a grant under the SSES program in 2021-2022 would be automatically ineligible for a grant in 2022-2023 if the program were to be carried over to that school year.

Response: The agency disagrees. Specifying that students who previously received the grant during the 2021-2022 school year would automatically be ineligible for receiving the grant in the 2022-2023 school year would not add clarity because §102.1601(b)(2) already explains that students who previously received a federally funded SSES grant are excluded from eligibility.

Comment: DRTx, The Arc of Texas, EasterSeals Central Texas, and CTD recommended the revision of §102.1601(c) to prioritize low-income families and use enrollment in the National School Lunch Program (NSLP) as a criterion for establishing whether a family qualifies as low-income. DRTx, The Arc of Texas, and EasterSeals Central Texas also suggested families who do not qualify for the NSLP be placed on a waitlist and that awards to this subset of applicants should be deferred until applicants who do qualify for the NSLP have received awards.

Response: TEA disagrees that the proposed revision is required. Subsection (c) already clarifies that, "TEA will prioritize, as necessary, the awarding of applicant accounts based on applicants qualifying for the National School Lunch Program and available funds." Additionally, requiring a waitlist could have the unintended consequence of delaying the provision of funds to students who do not qualify for the NSLP.

Comment: TCASE commented that §102.1601(c) requires grants to be offered on a first come, first served basis but also requires that students eligible for the compensatory education allotment will be prioritized based on qualification for the NSLP, as necessary. TCASE commented that it is unclear how the agency will accomplish this

priority with the implication that it is a first come, first served application and award process. TCASE also commented that §102.1601(e)(5) indicates the use of a waitlist, if necessary; however, TCASE commented that a waitlist would always be necessary, given the required priority parameters. Finally, TCASE suggested changing the reference to families qualifying for the NSLP to read instead, "who are eligible for the free and reduced lunch program under the National School Lunch Program and available funds."

Response: The agency disagrees that changes need to be made at §102.1601(c). Awards will be made on a first come, first served basis; however, prioritization will be used to ensure that students eligible for the compensatory education allotment are awarded accounts until funding is exhausted. Additionally, waitlists can be established to ensure awarding funds remains consistent. Finally, the agency does not believe additional clarification regarding the NSLP is required because the program is generally understood in the field.

Comment: DRTx, EasterSeals Central Texas, CTD, The Arc of Texas, and the Council for Developmental Disabilities (TCDD) suggested a revision to §102.1601(d) to require the ESC that contracts for the marketplace to establish an appeal process to resolve parent disputes about the purchasing and delivery of services and materials.

Response: The agency disagrees. Neither TEA nor the contracted ESC has the ability to monitor or control factors such as consumer dissatisfaction with delivery chain or purchasing issues that may be encountered in the private sector.

Comment: DRTx, EasterSeals Central Texas, CTD, TCDD, and The Arc of Texas recommended a revision to §102.1601(d) to ensure that the ESC contracting for the marketplace requires the vendor to protect students' private and confidential information and to require that the vendor not sell or monetize family and/or student data.

Response: The agency agrees. Section 102.1601(d)(1)(A) has been modified at adoption to add the sentence, "In accordance with the Family Educational Rights and Privacy Act, the contract must require the vendor for the marketplace to protect and keep confidential students' personally identifiable information, which may not be sold or monetized."

Comment: An individual recommended a revision to §102.1601(d) to ensure that there are opportunities to purchase adaptive aids from specialty catalogs for students with physical disabilities so that they are able to purchase items used by service providers such as physical and occupation therapists.

Response: The agency disagrees that additional rule language is required. There is nothing in the rule preventing the purchase of particular products or services for a student so long as program guidelines are met. Persons can reach out to the managing ESC to request the addition of vendors if the needed service or product is not available.

Comment: TCASE commented that §102.1601(d)(1)(D) and §102.1601(g)(5) grant authority to the ESC and to TEA, respectively, to approve or deny purchases. TCASE requested clarification as to which entity has the final authority to approve or deny purchases from the marketplace.

Response: The agency agrees that clarification is needed. Language in §102.1601(d)(1)(D) remains unchanged at adoption. Section 102.1601(g)(5) has been modified at adoption to allow the contracted ESC full authority to reject or deny any purchase.

Comment: CTD recommended that §102.1601(g)(5) be modified to add a process to notify parents about an appeal denial, including a timeline for notifying parents or guardians of an appeal denial.

Response: The agency disagrees. The appeals process is defined in §102.1601(e)(4). TEA is allowed to exercise discretion regarding appeals, and adding a timeline for notifying parents or guardians of a denial could limit TEA's ability to exercise its full discretion.

Comment: Texas Parent2Parent recommended a revision to §102.1601(d)(1)(E) related to the development of guidance on how new therapists, aids, supports, and services can be added to the approved vendor list.

Response: The agency disagrees that additional rule language is required. The addition of new vendors will be managed by the ESC contracted to manage the SSES program.

Comment: EasterSeals Central Texas and Texas Parent2Parent recommended a revision to §102.1601(d)(4) related to the development of a searchable database or rubric that provides a list of vendors or services by category or region, allowing parents to locate services and supports specific to their students' needs.

Response: The agency disagrees that additional rule language is required. The management of information will be the responsibility of the contracted ESC.

Comment: Texas State Teachers Association (TSTA) recommended revising §102.1601(g)(2), related to the use of funds, to read, "Supplemental special education materials and services must directly benefit the eligible student's educational needs, as determined by the Admission, Review and Dismissal committee."

Response: The agency disagrees. The admission, review, and dismissal (ARD) committee does not have the authority to decide what educational products and services a family may need or how the funds will be used. Additionally, requiring input from a student's ARD committee on the types of services or materials a student needs would result in the SSES program becoming a part of the provision of FAPE to the student.

Comment: CTD recommended that §102.1601(g)(2) clearly define "educational needs" to include not only academic needs but also functional supports and related services.

Response: The agency disagrees that clarification of "educational needs" is needed. The broad definition of "educational needs" allows for use of the funds as long as the use supports the student's educational needs. The rule as written does not exclude functional supports and related services that are an educational need for the student.

Comment: Relating to §102.1601(i)(2), two education professionals commented that requiring the student's ARD committee to inform parents about the SSES program during ARD committee meetings places a burden on schools and could lead parents to believe the school is responsible for providing SSES to the student.

Response: The agency disagrees. Subjection (j) makes it clear that SSES are not considered in or a part of the development of a student's individualized education program (IEP), the determination of the student's educational setting, or the provision of FAPE. Additionally, TEA disagrees that the provision of information about SSES during an ARD committee meeting equates to an endorsement by the ARD committee that SSES are necessary for FAPE. Rather, the provision of the related information helps to ensure that families know about the SSES program so that they can choose whether to participate. Finally, the requirement to inform parents about the SSES program during ARD committee meetings is grounded in TEC, §29.048(b), that requires the ARD committee of a student who has been approved for participation in the program to provide certain information to the student's parent at an ARD committee meeting.

Comment: An education professional commented that requiring the local educational agency (LEA) and the student's ARD committee to inform parents about the SSES program, how to apply, the goods and services available, and information about the online accounts places an additional burden of paperwork and records maintenance upon the school.

Response: The agency disagrees. The requirement in subsection (i)(1) to provide information to parents/guardians about the SSES program does not dictate how this information must be provided. For example, a district may elect to provide the required information through its website, by email, or as part of its student code of conduct. None of these venues require additional paperwork on behalf of principals or teachers. Additionally, there is no regulatory requirement placed upon the ARD committee for documentation related to the SSES program. In addition, the requirement to inform parents about the SSES program during ARD committee meetings is grounded in TEC, §29.048(b), that requires the ARD committee of a student who has been approved for participation in the program to provide certain information to the student's parent at an ARD committee meeting.

Comment: TCTA commented that it supports the requirements in §102.1601(i)(1) and (2) that LEAs provide information about the SSES program and that additional information be provided during the student's next ARD committee meeting.

Response: The agency agrees.

Comment: TCTA recommended that §102.1601(i) be amended to require the student's ARD committee to provide a list of services and materials to the student's parent/guardian that would be educationally beneficial to the student.

Response: The agency disagrees. Providing information about the SSES program during an ARD committee meeting does not equate to an endorsement by the ARD committee that SSES are necessary for FAPE. However, the additional step of providing a list of services and materials to the student's parent/guardian that the ARD committee believes would be beneficial to the specific student could be interpreted as the committee making a recommendation related to the provision of FAPE to the student. This would be contrary to the intent of the SSES program and the rule.

Comment: DRTx, EasterSeals Central Texas, The Arc of Texas, the Association of Texas Professional Educators (ATPE), TCASE, CTD, TCDD, and TSTA recommended the revision of §102.1601(i) to create a model information notice about SSES services and materials that ensures uniform and consistent information is provided to parents about the program.

Response: The agency disagrees. It is the role of the ESC contracted to manage the SSES program to provide oversight regarding communication about the program, including any standardized information notices and/or materials. The contracted ESC and/or TEA may elect to provide a model information notice, but, in order to allow for greater flexibility, TEA disagrees that it is necessary for the rule to require such a model information notice.

Comment: TCDD recommended adding language in §102.1601(i) to require that materials developed for notifying parents or guardians about the SSES program be provided in English, Spanish, and any other language that is prominently spoken in the community.

Response: The agency disagrees that additional language is needed in §102.1601(i) to require materials to be provided in languages other than English because this requirement already exists. In accordance with guidance issued by the Office for Civil Rights and the U.S. Department of Justice, "limited English proficient (LEP) parents . . . are entitled to meaningful communication in a language they can understand, such as through translated materials or a language interpreter, and to adequate notice of information about any program, service, or activity that is called to the attention of non-LEP parents." (*see Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs*: <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-el-students-201501.pdf>).

Comment: ATPE recommended that TEA create a process to automatically notify school districts and charter schools when an enrolled student receives an SSES grant.

Response: While TEA may develop such a process, TEA disagrees that this requirement should be part of the rule in the event that resources are not available to do so.

Comment: TCASE requested clarification of the word "next" in §102.1601(i)(2) in regard to providing information to the family at the students "next" ARD meeting.

Response: The agency does not agree that further clarification in rule is required. The plain meaning of the word "next" would be the first ARD committee meeting convened for the student following the effective date of new §102.1601.

Comment: CTD recommended that notice to parents and guardians about the SSES program be distributed as soon as possible and not only during a scheduled or future ARD committee meeting.

Response: The agency disagrees that additional clarification is needed. Provisions in §102.1601(i)(1) require school districts and open-enrollment charter schools to notify parents and guardians of students served by special education of the SSES program and how to apply and does not require that this notification occur at a student's ARD committee meeting.

Comment: CTD recommended clarification in §102.1601(j) that availability of and/or access to SSES grants does not impact consideration or provision of compensatory services.

Response: The agency disagrees that additional clarification is needed in §102.1601(j) because this subsection already prohibits a student's ARD committee from considering a student's current or anticipated eligibility for any supplemental special education instructional materials or services when developing or revising a student's IEP, when determining a student's educational setting, or in the provision of FAPE. Additionally, §102.1601(a)(5) and (6) define supplemental special education instructional materials and services to specifically exclude services that are provided as compensatory services or as a means of providing a student with FAPE.

Comment: CTD recommended adding annual evaluation and reporting metrics to measure the amount of and how grants are distributed, accessibility, program satisfaction, student demographics and outcomes, return on investment, and sustainability.

Response: The agency disagrees that including a requirement for annual evaluation and reporting metrics belongs in rule, but it will consider ways of evaluating the success of the program.

Comment: CTD recommended adding rules to create an application process that is fully accessible to parents with disabilities and families with low incomes who may not have access to technology.

Response: The agency disagrees that additional rulemaking is needed. The SSES program must follow Section 508 accessibility requirements. In addition, because TEC, §29.042(b), requires this to be an online program with an online account, families will need access to an email account in order to use it. However, the application may be accessed through mobile devices, and families will be encouraged to reach out for assistance in accessing the program.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §29.041, as added by Senate Bill (SB) 1716, 87th Texas Legislature, Regular Session, 2021, which establishes requirements for providing a supplemental special education services and instructional materials program for certain public school students receiving special education services and requires the commissioner by rule to determine, in accordance with TEC, Chapter 29, Subchapter A-1, the criteria for providing a program to provide supplemental special education services and instructional materials for eligible public school students; TEC, §29.042, as added by SB 1716, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to determine requirements related to the establishment and administration of the SSES program; TEC, §29.043, as added by SB 1716, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to establish an application process for the SSES program; TEC, §29.044, as added by SB 1716, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to determine eligibility criteria for the approval of an application submitted under TEC, §29.043; TEC, §29.045, as added by SB 1716, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to determine requirements for students meeting eligibility criteria and requirements for assigning and maintaining accounts under TEC, §29.042(b); TEC, §29.046, as added by SB 1716, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to determine requirements and restrictions related to account use for accounts assigned to students under TEC, §29.045; TEC, §29.047, as added by SB 1716, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to determine requirements related to criteria and application for agency-approved providers and vendors; TEC, §29.048, as added by SB 1716, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to determine responsibilities for the admission, review, and dismissal committee; and TEC, §29.049, as added by SB 1716, 87th Texas Legislature, Regular Session, 2021, which requires that the commissioner adopt rules as necessary to establish and administer the SSES and instructional materials program.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§29.041-29.049.

<rule>

§102.1601. Supplemental Special Education Services and Instructional Materials Program for Certain Public School Students Receiving Special Education Services.

- (a) Definitions. For the purposes of this section, the following definitions apply.
 - (1) Eligible student--A student who meets all program eligibility criteria under Texas Education Code (TEC), §29.044, and this section.
 - (2) Management system--The online system provided by the marketplace vendor to allow for account creation, management of funds, and access to the marketplace.
 - (3) Marketplace--The virtual platform where parents and guardians with Supplemental Special Education Services (SSES) program funds may purchase goods and services.
 - (4) Marketplace vendor--The vendor chosen by the Texas Education Agency (TEA) to create an online marketplace for the use of SSES program funds.
 - (5) Supplemental special education instructional materials--This term has the meaning defined in TEC, §29.041, and specifically excludes materials that are provided as compensatory services or as a means of providing a student with a free appropriate public education.
 - (6) Supplemental special education services--This term has the meaning defined in TEC, §29.041, and specifically excludes services that are provided as compensatory services or as a means of providing a student with a free appropriate public education.
- (b) Eligibility criteria. All students currently enrolled in a Texas public school district or open-enrollment charter school who are served in a special education program during the 2021-2022 or 2022-2023 school year, including, but not limited to, students in early childhood special education, prekindergarten, Kindergarten-Grade 12, and 18-and-over transition programs, are eligible for the SSES program with the following exclusions:
 - (1) students who do not reside in Texas or move out of the state, not including military-connected students entitled to enroll or remain enrolled while outside the state; or
 - (2) students who previously received a federally funded SSES grant.
- (c) Awards. Parents and guardians of eligible students may receive grants as long as funds are available of up to \$1,500 for use in the purchasing of supplemental special education instructional materials and supplemental special education services through the curated marketplace of educational goods and services. Parents and guardians may receive only one grant for each eligible student. Students enrolled in a school district or open-enrollment charter school that is eligible for a compensatory education allotment under TEC, §48.104, will be prioritized to receive a grant award. TEA will prioritize, as necessary, the awarding of applicant accounts based on applicants qualifying for the National School Lunch Program and available funds.
- (d) Establishment of the marketplace.
 - (1) In accordance with TEC, §29.042(d), TEA shall award an education service center (ESC) with an operational and school district support grant, which may include, but is not limited to, the following operational requirements:
 - (A) writing and administering a contract for a vendor for the SSES marketplace that curates the content in its marketplace for educational relevancy. In accordance with the Family Educational Rights and Privacy Act, the contract must require the vendor for the marketplace to protect and keep confidential students' personally identifiable information, which may not be sold or monetized;
 - (B) providing technical assistance to parents and guardians throughout the SSES program process;

- (C) serving as the main point of contact for the selected marketplace vendor to ensure eligible student accounts are appropriately spent down;
 - (D) approving or denying all purchases from the SSES marketplace, including communication with parents and guardians about purchase order requests;
 - (E) increasing the number of qualified service providers in the marketplace; and
 - (F) approving or denying all potential service providers.
- (2) Providers of supplemental special education instructional materials and services may apply to be listed in the marketplace. To become an approved marketplace service provider, an applicant must sign a service provider agreement and comply with licensing, safety, and employee background checks.
- (A) Organization service providers are required to provide their Texas Tax ID for TEA to verify the validity of the organization.
 - (B) Individual service providers are required to provide proof of credentials and licensing in accordance with the individual service provider categories established by TEA.
- (3) TEA shall provide a process for the application and approval of vendors to the marketplace.
- (4) TEA and the marketplace vendor shall provide a curated list of vendors through which parents and guardians can purchase educationally relevant supplemental special education instructional materials. The established marketplace vendor shall be responsible for ensuring the vendors comply with SSES program parameters as they relate to the marketplace and be responsible for all communications with marketplace vendors.
- (e) Application process for grant on behalf of a student.
- (1) TEA is responsible for the application process and the determination of which applicants are approved for SSES program grants.
 - (2) Parents and guardians who would like to apply on behalf of their eligible students must complete the online application.
 - (3) Upon approval of the application:
 - (A) TEA shall send contact information for parents and guardians of eligible students in a secure manner to the online marketplace vendor for account creation and distribution;
 - (B) parents and guardians of eligible students will receive an email to the same email address provided during application from the marketplace vendor with information on how to access their accounts; and
 - (C) parents and guardians will be awarded an account of not more than \$1,500 per eligible student to be used to purchase supplemental special education services and supplemental special education instructional materials.
 - (4) Parents and guardians of students who are deemed not eligible or who are determined to have violated account use restrictions under subsection (h) of this section will receive notification from TEA and be provided an opportunity to appeal the denial or account use determination. TEA shall exercise its discretion to determine the validity of any such appeal.
 - (5) If necessary, eligible students will be placed on a waitlist and parents and guardians will be notified. Should additional funds become available, priority will be given in the order established by the waitlist and in accordance with subsection (c) of this section.
 - (6) TEA shall maintain confidentiality of students' personally identifiable information in accordance with the Family Educational Rights and Privacy Act and, to the extent applicable, the Health Insurance Portability and Accountability Act.
- (f) Approval of application; assignment of account.

- (1) TEA shall set aside funds for a pre-determined number of accounts of up to \$1,500 per account to be awarded to parents and guardians of eligible students.
 - (2) Parents and guardians with more than one eligible student may apply and receive a grant for each eligible student.
 - (3) Approved parents and guardians will receive an award notification email from the marketplace vendor and may begin spending account funds upon completion of account setup.
 - (4) Within 30 calendar days from receiving an award notification email, parents and guardians must:
 - (A) access or log in to their account or the account may be subject to reclamation; and
 - (B) agree to and sign the SSES parental acknowledgement affidavit.
- (g) Use of funds. Use of SSES program funds provided to parents and guardians are limited as follows.
- (1) Only supplemental special education instructional materials and supplemental special education services available through the marketplace of approved providers and vendors may be purchased with SSES program funds.
 - (2) Supplemental special education instructional materials and services must directly benefit the eligible student's educational needs.
 - (3) Supplemental special education instructional materials shall be used in compliance with TEA purchasing guidelines.
 - (4) If TEA approves vendors for a category of instructional material under subsection (d) of this section, supplemental special education instructional materials must be purchased from the TEA-approved vendor for that category of supplemental special education instructional material. If TEA does not establish criteria for a category of supplemental special education instructional materials, funds in a student's account may be used to purchase the supplemental special education instructional materials from any vendor.
 - (5) The contracted ESC has full authority to reject or deny any purchase.
 - (6) Parents may not use SSES program funds for reimbursement of goods or services obtained outside of the marketplace. SSES program funds shall not be paid directly to parents or guardians of eligible students.
- (h) Account use restrictions. TEA may, subject to the appeal process referenced in subsection (e)(4) of this section, close or suspend accounts and reclaim a portion or all of the funds from accounts in the marketplace if:
- (1) the supplemental special education materials or services that parents or guardians attempt to purchase are not educational in nature or are deemed to be in violation of the purchasing guidelines set forth by TEA;
 - (2) it is determined that the supplemental special education materials or services purchased do not meet the definitions in subsection (a)(5) and (6) of this section;
 - (3) the SSES program parental acknowledgement affidavit is not signed within 30 calendar days of receipt of account email from the marketplace vendor;
 - (4) account holders do not begin spending funds from their accounts within six months after account creation; or
 - (5) a student no longer meets the eligibility criteria set out in subsection (b) of this section.
- (i) Requirements to provide information.
- (1) School districts and open-enrollment charter schools shall notify parents and guardians of students served by special education of the SSES program and how to apply.

- (2) At the student's next admission, review, and dismissal (ARD) committee meeting, the ARD committee shall determine if a student has been awarded an SSES account. At this meeting, upon learning that a student has been awarded an account, the ARD committee shall provide:
 - (A) information about types of goods and services that are available to the eligible student;
and
 - (B) instructions and resources on accessing the online accounts.
- (j) Restrictions. A student's ARD committee may not consider a student's current or anticipated eligibility for any supplemental special education instructional materials or services that may be provided under this section when developing or revising a student's individualized education program, when determining a student's educational setting, or in the provision of a free appropriate public education.