

The Texas Education Agency (TEA) proposes amendments to §§89.1080, 89.1185, and 89.1195, concerning special education services. The proposed amendments would provide updates and clarifications regarding special education complaints and due process hearings.

**BACKGROUND INFORMATION AND JUSTIFICATION:** The rules in Chapter 89, Subchapter AA, address provisions for special education services, including general provisions and clarification of federal regulations and state law. The proposed amendments would update rules as follows.

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

The proposed amendment to §89.1080, Regional Day School Program for the Deaf, would replace "hearing impairment" with "deaf or hard of hearing." Additional technical edits would also be made.

*Division 7. Dispute Resolution*

The proposed amendment to §89.1185, Hearing Procedures, would clarify that summary proceedings in a special education due process hearing may be used only when both parties in the hearing agree to use the summary process.

The proposed amendment to §89.1195, Special Education Complaint Resolution, would specify, in subsection (a), that TEA's complaint resolution process allows for investigation and issuance of findings regarding alleged violations of state special education statute or administrative rule. Subsection (c) would be amended to provide clarification on the sixty-calendar-day timeline for resolving a special education complaint and provide clarification on the one-calendar-year statute of limitations for a special education complaint. The proposed amendment to subsection (d) would allow TEA to provide a copy of a special education complaint to the public education agency against which the complaint is filed if the complainant does not do so. The proposed amendment to subsection (e)(1)(B) would clarify requirements in 34 Code of Federal Regulations (CFR), §300.504, regarding the provision of the Notice of Procedural Safeguards to parents upon the filing of the first state complaint during a school year. Proposed new subsections (h) and (i) would explain TEA's general supervisory authority under 34 CFR, §300.600, to investigate credible complaints related to federal and state special education requirements even if a complaint does not meet federal requirements in 34 CFR, §§300.151-300.153. The rule would clarify what a "credible complaint" is and set out steps TEA can take to address a credible complaint that does not meet federal requirements in 34 CFR, §§300.151-300.153. Proposed new subsection (j) would provide for a reconsideration process for credible complaints investigated under TEA's general supervisory authority.

**FISCAL IMPACT:** Jennifer Alexander, deputy commissioner for special populations, 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 by providing the agency with a mechanism for addressing credible allegations of Individuals with Disabilities Education Act (IDEA) violations that do not qualify as a state complaint.

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 clarification for members of the public and school districts regarding due process hearings and special education complaints as well as a mechanism for the agency to address credible allegations of IDEA violations that are not state complaints. 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:** The public comment period on the proposal begins September 23, 2022, and ends October 24, 2022. 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 to solicit testimony and input on the proposal will be held at 9:00 a.m. on October 6 and 7, 2022, via Zoom. The public may participate in the October 6 hearing virtually by linking to the hearing at <https://us02web.zoom.us/j/89294633839>. The public may participate in the October 7 hearing virtually by linking to the hearing at <https://us02web.zoom.us/j/85463744981>. The public may attend one or both hearings. Anyone wishing to testify at one of the hearings must sign in between 8:30 a.m. and 9:00 a.m. on the day of the respective hearing. Each hearing will conclude once all who have signed in have been given the opportunity to comment. Each individual's comments are limited to three minutes, and each individual may comment only once. Both hearings will be recorded and made available publicly. Questions about the hearings should be directed to [spedrule@tea.texas.gov](mailto:spedrule@tea.texas.gov).

**STATUTORY AUTHORITY.** The amendment is proposed under 34 Code of Federal Regulations (CFR), §300.149 and §300.600, which set out the state's general supervisory authority to identify and correct noncompliance related to special education; 34 CFR, §§300.151-300.153, which set out requirements related to the state's special education complaints process; 34 CFR, §300.504, which sets out requirements related to the provision of the Notice of Procedural Safeguards; 34 CFR, §§300.512, 300.515, 300.516, and 300.532, which set out requirements and procedures related to special education due process hearings and appeals; and Texas Education Code, §29.001, which sets out the state's general authority and obligation to develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of 3 and 21.

**CROSS REFERENCE TO STATUTE.** The amendment implements 34 Code of Federal Regulations, §§300.149, 300.151-300.153, 300.504, 300.512, 300.515, 300.516, 300.532, and 300.600, and Texas Education Code, §29.001.

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#### **§89.1080. Regional Day School Program for the Deaf.**

In accordance with ~~the~~ Texas Education Code ~~(TEC)~~, §§30.081-30.087, local school districts shall have access to regional day school programs for the deaf operated by school districts at sites previously established by the State Board of Education ~~(SBOE)~~. Any student who is deaf or hard of hearing with a disability that ~~has a hearing impairment which~~ severely impairs processing linguistic information through hearing, even with recommended amplification, and that ~~which~~ adversely affects educational performance

shall be eligible for consideration for the Regional Day School Program for the Deaf, subject to the admission, review, and dismissal [~~ARD~~] committee recommendations.

STATUTORY AUTHORITY. The amendments are proposed under 34 Code of Federal Regulations (CFR), §300.149 and §300.600, which set out the state's general supervisory authority to identify and correct noncompliance related to special education; 34 CFR, §§300.151-300.153, which set out requirements related to the state's special education complaints process; 34 CFR, §300.504, which sets out requirements related to the provision of the Notice of Procedural Safeguards; 34 CFR, §§300.512, 300.515, 300.516, and 300.532, which set out requirements and procedures related to special education due process hearings and appeals; and Texas Education Code, §29.001, which sets out the state's general authority and obligation to develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of 3 and 21.

CROSS REFERENCE TO STATUTE. The amendments implement 34 Code of Federal Regulations, §§300.149, 300.151-300.153, 300.504, 300.512, 300.515, 300.516, 300.532, and 300.600, and Texas Education Code, §29.001.

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#### **§89.1185. Hearing Procedures.**

(a)-(c) (No change.)

(d) Except as modified or limited by the provisions of 34 CFR, §§300.507-300.514 or 300.532, or this division, the Texas Rules of Civil Procedure will govern the proceedings at the hearing and the Texas Rules of Evidence will govern evidentiary issues. Other than a sufficiency determination made in accordance with 34 CFR, §300.508, any summary proceedings in a hearing on a due process complaint that would serve to limit or conflict with either party's hearing rights provided by 34 CFR, §§300.507-300.514 or 300.532, or this division, including the right to present evidence and confront, cross-examine, and compel the attendance of witnesses complaint, may be used only when both parties consent to use the summary process.

(e)-(p) (No change.)

#### **§89.1195. Special Education Complaint Resolution.**

(a) In accordance with 34 Code of Federal Regulations (CFR), §300.151, the Texas Education Agency (TEA) has established a complaint resolution process that provides for the investigation and issuance of findings regarding alleged violations of Part B of the Individuals with Disabilities Education Act (IDEA) or a state special education statute or administrative rule .

(b) (No change.)

(c) A complaint must be filed with the TEA by electronic mail, mail, hand-delivery, or facsimile. The TEA has developed a form that may be used by persons or organizations filing a complaint. The form is available on request from the TEA and is also available on the TEA website. The complaint timeline will commence on the business day that TEA receives the complaint. If a complaint is received on a day other than a business day, the [The] complaint timeline will commence on the first [next] business day after the day on which the TEA receives the complaint. The one-calendar-year statute of limitations for a complaint will be determined based on the day that the complaint timeline commences.

(d) If a complaint does not meet the requirements outlined in subsection (b) of this section, the TEA must notify the complainant of the deficiencies in the complaint. The TEA cannot investigate a complaint through the process set out in 34 CFR, §§300.151-300.153, and this section if the complaint does not meet the requirements in subsection (b) of this section except that, if the complainant did not provide a copy of the complaint to the public education agency that is the subject of the complaint at the same time that the complaint is filed with the TEA, TEA will provide a copy of the complaint to the public education agency. In this case, the timelines set out in subsection (c) of this section commence on the day that the TEA provides the complaint to the public education agency.

- (e) Upon receipt of a complaint that meets the requirements of this section, the TEA must initiate an investigation to determine whether the public education agency is in compliance with applicable law and regulations in accordance with the following procedures.
- (1) The TEA must send written notification to the parties acknowledging receipt of a complaint.
    - (A) (No change.)
    - (B) In accordance with 34 CFR, §300.504, upon receipt of the first special education complaint filed by a parent during a school year, TEA will provide an electronic copy of the Notice of Procedural Safeguards to the parent, and the public education agency against which the complaint is filed must provide the parent with a hard copy of the Notice of Procedural Safeguards unless that parent has elected, in accordance with 34 CFR, §300.505, to receive the required notice by electronic mail, if the public education agency makes that option available.
    - (C) ~~(B)~~ The public education agency must provide the TEA with a written response to the complaint and all documentation and information requested by the TEA. The public education agency must forward its response to the parent who filed the complaint at the same time that the response is provided to the TEA. The public education agency may also provide the parent with a copy of the documentation and information requested by the TEA. If the complaint was filed by an individual other than the student's parent, the public education agency must forward a copy of the response to that individual only if written parental consent has been provided to the public education agency.
  - (2)-(7) (No change.)
- (f)-(g) (No change.)
- (h) In exercising its general supervisory authority under 34 CFR, §300.149 and §300.600, the TEA may resolve any other credibly alleged violation of IDEA or a state special education statute or administrative rule that it receives even if a sufficient complaint is not filed with the TEA in accordance with 34 CFR, §§300.151-300.153, and this section. In doing so, the TEA may take one or more of the following actions:
- (1) requesting a response and supporting documentation from a public education agency against which a credible violation of IDEA or a state special education statute or administrative rule has been alleged;
  - (2) conducting a desk or on-site investigation of a public education agency;
  - (3) making a determination regarding the allegation(s); and
  - (4) requiring a public education agency to implement corrective actions to address any identified noncompliance.
- (i) For the purposes of subsection (h) of this section, anonymous complaints, complaints that are received outside the one-calendar-year statute of limitations for a special education complaint, and complaints that do not include sufficient information or detail for the TEA to determine that an alleged violation of special education requirements may have occurred will not be considered to be credible complaints.
- (j) If the public education agency against which a complaint is received under subsection (h) of this section believes that TEA made an incorrect determination of noncompliance, the public education agency may submit a written request for reconsideration to the TEA within 15 calendar days of the date that TEA issued its findings. The reconsideration request must identify the asserted error and include any documentation to support the claim. The TEA will consider the reconsideration request and provide a written response to the public education agency within 45 calendar days of receipt of the request. The filing of a reconsideration request must not delay a public education agency's implementation of any corrective actions required by the TEA.