

The Texas Education Agency (TEA) adopts an amendment to §102.1601, concerning supplemental special education services (SSES) and instructional materials program for certain public school students receiving special education services. The amendment is adopted with changes to the proposed text as published in the January 20, 2023 issue of the *Texas Register* (48 TexReg 195) and will be republished. The adopted amendment reflects a grant source change and provides clarification.

REASONED JUSTIFICATION: Senate Bill (SB) 1716, 87th Texas Legislature, Regular Session, 2021, added Texas Education Code (TEC), Chapter 29, Subchapter A-1, which established 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 of education was required to establish rules to implement and administer the SSES program, and §102.1601 was adopted to establish 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 are 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 prioritizes applicants with economic need based on qualification for the National School Lunch Program. The adopted amendment updates the rule as follows.

Subsection (b)(2) is amended to remove reference to the federally funded SSES grant and instead refer to any SSES grant, including the state-funded SSES grant. This change reflects that grant funds may have multiple sources.

Subsections (c)(1), (e)(3)(C), and (f)(1) were amended to reflect an award amount of up to \$1500 in state funds with the possibility of additional federal funds depending on eligibility and availability. This change reflects the use of state grant funds under TEC, §29.042, as well as the potential use of additional federal grant funds, subject to eligibility and availability of such federal funds, for a grant program addressing the needs of medically fragile children. At adoption, the language in subsection (e)(3)(C) was changed from "no more than \$1,500" to "up to \$1,500" for consistency within the rule.

Subsection (c) was also amended to move information related to the use of the National School Lunch Program for need-based qualification from subsection (c)(1) to new subsection (c)(3). Based on public comment, subsection (c)(3) was amended at adoption to remove the phrase "as necessary" when prioritizing those who qualify for the National School Lunch Program. To align with current agency practice, new subsection (c)(2) was added to reflect that TEA uses Public Education Information Management System (PEIMS) codes to verify award eligibility.

New subsection (f)(4) has been added to specify that parents and guardians who receive an award notification but whose student no longer qualifies for the SSES program must notify TEA of the student's change in eligibility status. This change ensures that grant funds are provided only to eligible students.

Subsection (g)(6) was amended to include a reference to guardians when referencing parents. This change ensures references to parents and guardians are consistent throughout the rule.

Subsection (h) was amended to remove the provision that SSES accounts are suspended when account holders do not begin spending funds from their accounts within six months after account creation. This change allows for spending period fluctuations and ensure flexibility based on appropriations, waiting lists, and programmatic need.

Based on public comment, subsection (i) has been revised at adoption to clarify the responsibilities of a student's admission, review, and dismissal (ARD) committee in relation to the SSES program. Specifically, the change removes the requirement that an ARD committee determine whether a student has been awarded an SSES account.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began January 20, 2023, and ended February 21, 2023. Additionally, public hearings to solicit testimony and input on the

proposal were held January 24 and 26, 2023. Following is a summary of public comments received and agency responses.

Comment: The Texas Council of Administrators of Special Education (TCASE) commented that the proposed rule went beyond what statute requires in relation to ARD committee meetings. TCASE suggested that subsection (i) be reworded to remove the ARD committee's responsibility to determine if a student has been awarded an SSES account. TCASE further suggested that the rule include a provision that TEA will notify school districts of students who have been awarded accounts.

Response: The agency agrees in part. Determining whether a student has been awarded an SSES account would assist an ARD committee in knowing in how much detail to provide regarding the SSES program. However, the agency has modified subsection (i) at adoption to specify that the ARD committee responsibilities are to provide information about the types of goods and services that are available and instructions and resources on accessing the online accounts. The requirement that school districts and charter schools notify families of their eligibility remains. Regarding TCASE's suggestion that the agency notify school districts of students who have been awarded accounts, the agency disagrees. The agency is unable to provide student-level information on who has accessed SSES accounts to ARD committees due to limitations of the agency's data systems.

Comment: Disability Rights Texas expressed that the phrasing "as necessary" when referring to the prioritization of SSES grants to those who qualify for the National School Lunch Program should be deleted to clearly signal that the SSES grant awards are prioritized for students with disabilities with limited financial means.

Response: The agency agrees. While the phrase "as necessary" was originally proposed to refer to the number of pending applications when a new infusion of funding was made available, the agency does have systems in place to consistently prioritize the awarding of accounts to those who qualify for the National School Lunch Program. The agency has, therefore, modified subsection (c)(3) at adoption to remove the phrase "as necessary."

Comment: TCASE commented that SSES program awards should be prioritized for those with the greatest need, that it is unclear how the agency prioritizes student awards, that using PEIMS results in an automated process for awarding accounts, and that the agency should create application periods and roll over un-awarded accounts to the next application period.

Response: The agency disagrees in part and provides the following clarification. TEC, §29.044(b), requires the prioritization of those students for whom a school district or open-enrollment charter school receives the compensatory education allotment under TEC, §48.104. The rule defines this priority as those who are eligible for the National School Lunch Program. To alleviate confusion and respond to other public comment, the agency has agreed to modify subsection (c)(3) at adoption to delete the proposed phrase "as necessary." The agency utilizes PEIMS data to verify both special education eligibility and National School Lunch Program eligibility. At this time, application periods are not utilized, as it is not expressly stated in statute that the agency has the authority to do so.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §29.041, which establishes requirements for providing a supplemental special education services (SSES) 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, which requires the commissioner to determine requirements related to the establishment and administration of the SSES program; TEC, §29.043, which requires the commissioner to establish an application process for the SSES program; TEC, §29.044, which requires the commissioner to determine eligibility criteria for the approval of an application submitted under TEC, §29.043; TEC, §29.045, 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, 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, which requires the commissioner to determine requirements related to criteria and application for agency-approved providers and vendors; TEC, §29.048, which requires the commissioner to determine responsibilities for the admission, review, and dismissal committee; and TEC, §29.049, which requires that the commissioner adopt rules as necessary to establish and administer the SSES and instructional materials program.

CROSS REFERENCE TO STATUTE. The amendment 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 an SSES grant.
- (c) Awards.
- (1) Parents and guardians of eligible students may receive grants as long as funds are available of up to \$1,500 in state funds and may receive additional federal funds, depending on eligibility and availability, 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.
 - (2) TEA will use Public Education Information Management System (PEIMS) codes to verify eligibility in order to award accounts for the SSES program.
 - (3) TEA will prioritize 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 up to \$1,500 in state funds and may be awarded in the account additional federal funds, depending on eligibility and availability, 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 in state funds with additional federal funds set aside, depending on eligibility and availability, 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) Parents and guardians who receive an award notification but whose student no longer qualifies under subsection (b) of this section shall notify TEA of their student's change in eligibility status.
 - (5) 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 and guardians 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; or
 - (4) a student no longer meets the eligibility criteria set out in subsection (b) of this section.
- (i) Requirements to provide information. School districts and open-enrollment charter schools shall notify families of their eligibility for the SSES program and shall provide the following at the student's admission, review, and dismissal (ARD) committee meeting:
- (1) instructions and resources on accessing the online accounts; and
 - (2) information about the types of goods and services that are available through the SSES grant.
- (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.